

1
2 IN THE UNITED STATES DISTRICT COURT
3
4 FOR THE WESTERN DISTRICT OF VIRGINIA
5
6 ABINGDON DIVISION
7
8 UNITED STATES OF AMERICA,)
9)
10 Plaintiff,) Criminal Case No.
11)
12) 1:17-cr-00027-JPJ-PMS-1
13 vs.)
14)
15)
16 JOEL A. SMITHERS,)
17)
18)
19 Defendant.)

A P P E A R A N C E S

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25 Proceedings taken by Certified Court Reporter and transcribed
using Computer-Aided Transcription

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1 (Proceedings commenced at 9:02 a.m.)

2 THE COURT: Good morning, counsel. Is there
3 anything that we need to take up before we have the jury?

4 MR. WILLIAMS: Your Honor, may I approach?

THE COURT: Yes, sir.

6 MR. WILLIAMS: Your Honor, I have another paper that
7 my client would like me to hand you.

8 THE COURT: All right. Mr. Smithers, you don't need
9 to continue to file papers complaining that I have not removed
10 your lawyer. Okay?

11 You don't need to do that. I understand your
12 position. And if this is just another statement why you don't
13 want Mr. Williams to represent you, I understand that, and
14 I've ruled on that.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And it's not necessary for you to
17 continue to file such papers.

18 THE DEFENDANT: Yes, Your Honor. These are new
19 material facts I believe that support that claim.

20 THE COURT: Well, we're not going to change
21 Mr. Williams. Mr. Williams is doing a good job for you. He
22 has, in my opinion, has effectively cross-examined your
23 witnesses -- or the Government's witnesses. And I don't know
24 of anything that he hasn't done for you that is proper.

25 THE DEFENDANT: If it please the Court, Your Honor,

1 I would just like this to be admitted in the record.

2 THE COURT: Well, let me see it, first.

3 MR. RAMSEYER: Your Honor, the Government hasn't
4 seen it at this point.

5 MR. WILLIAMS: I'm sorry.

6 THE DEFENDANT: I have a copy if the Government
7 would like to look at it.

8 THE COURT: All right. Mr. Williams, Mr. Smithers
9 says you assaulted him. Did you assault him?

10 MR. WILLIAMS: Sir, the only thing that I did was he
11 was sitting there and he made a comment while -- he was trying
12 to give me, he made a vulgar statement toward me and
13 everything. When he finished, I told him, I said, if you
14 don't quit doing this, I'm going to knock you out. And I did
15 say that. I apologized to him, told him I didn't mean to do
16 that, but it was kind of the heat of the moment.

17 THE COURT: Well, Mr. Williams, I don't understand
18 why you would say that.

19 MR. WILLIAMS: I apologize.

20 THE COURT: I know Mr. Smithers has been a very
21 difficult client for you.

22 MR. WILLIAMS: I understand.

23 THE COURT: He has made demands on you that, in my
24 opinion, have been unnecessary. I don't blame Mr. Smithers.
25 Mr. Smithers is, from all I can gather in this case, very

1 naive about legal proceedings. He has unrealistic
2 expectations about the situation. And I'm sure he can test
3 you, but you need to cool it with him. And as far as I can
4 tell, you-all have been getting along. And you have consulted
5 with him, I think about every witness, and he has given you
6 notes and requested things, I'm sure.

7 MR. WILLIAMS: And, Your Honor, I do apologize. I
8 shouldn't have said it. I was upset at the time. He had made
9 some statements to me. But with respect to that, I was not
10 appropriate, and I did apologize to him. We actually did go
11 out and eat dinner together yesterday afterwards when it
12 finished. And I don't think -- it was a heat of the moment
13 thing, and I do apologize, and I apologized to him.

14 THE COURT: All right. I'll file that. I'll allow
15 it to be filed.

16 Now let me direct this to Mr. Smithers.
17 Mr. Smithers, you're in this boat here, okay. Mr. Williams is
18 your lawyer. Under the law, Mr. Williams, as counsel, has to
19 make decisions concerning the proper questions to be asked,
20 the proper strategy to be used in cross-examining witnesses,
21 and that's his job. And under our system, you can't direct
22 him to ask certain questions. That's not the way it works.
23 There are some certain things that are entirely up to you.
24 And one of those coming up is whether you're going to testify
25 or not. That's entirely up to you. You ought to listen to

1 his advice, but his advice is advice only. Your -- you have
2 to make that decision. And when the time comes, I'm going to
3 go over that again with you to make sure that you understand
4 whether or not you desire to testify and the ramifications of
5 that. We're not at that point yet because the Government
6 hasn't finished its case.

7 But, otherwise, Mr. Williams, he's the captain of
8 the ship here. And you need to understand that. I mean,
9 that's the situation you're in. Okay?

10 And you ought to, for your own good, cooperate with
11 him, assist him. It's perfectly correct that you ask him --
12 that you give him information, that you suggest things to him.
13 That's completely fine. Because you obviously -- you know,
14 you're the defendant, you're the one that's on trial here.
15 And any -- you ought to give him as much information to help
16 yourself as you can. But, again, he has to make the decision.
17 And you need to cooperate in a professional manner with him.

18 And I'm sorry that he lost his temper with you.
19 But, you know, quite frankly, you're an unusual defendant.
20 Most defendants, you know, embrace their lawyer, want to help
21 their lawyer. You have had a somewhat antagonistic view of
22 him from the beginning, belittling him, belittling his office,
23 and, you know, how he's just a country lawyer and not good
24 enough for you and so on. And that didn't help you at all.

25 You need to, for your own good, and I implore you to

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1 cooperate with him, to be open with him, to give him, you
2 know, advice. That's perfectly fine. I want you-all to have
3 communication. But you need to get along.

4 Now, he's apologized to you. We're gonna put that
5 aside. I told him that it was improper for him to do that.
6 He understands that. But I think, under the circumstances, it
7 was just one of those spur of the moments.

8 Trials are, for everybody, including experienced
9 lawyers, are filled with tension. Because Mr. Williams wants
10 to do the best for you that he can. That's his job. And he's
11 been doing that for many years for people in your position.
12 And there's no reason why he wouldn't want to do the best he
13 can for you. And as far as I can tell, he has. I mean, I
14 think he's been effective in his cross-examination. But he
15 needs to continue to do that. You need to help him. But he
16 is the captain of the ship in regard to questions that are
17 going to be asked.

18 All right. You may be seated.

19 And is there anything further that we need to take
20 up?

21 If not, we'll have the jury in.

22 (Proceedings held in the presence of the jury.)

23 THE COURT: Good morning, ladies and gentlemen.
24 Good to see you again this morning. We're ready to go.

25 The Government may call its next witness.

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1 MR. JUHAN: The United States calls Steven Frey.

2 THE CLERK: Please raise your right hand.

3 Do you solemnly swear that the testimony you're
4 about to give in this case shall be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: You may be seated.

8 **STEVEN WAYNE FREY, JUNIOR,**

9 Called as a witness herein by the Government, having been
10 first duly sworn, was examined and testified as follows:

11 **DIRECT EXAMINATION**

12 BY MR. JUHAN:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. Would you please introduce yourself to the jury.

16 A. My name is Deputy Frey. I work for the Raleigh County
17 Sheriff's Office in West Virginia.

18 Q. What's your name, sir?

19 A. Steven Wayne Frey, Junior.

20 Q. Would you spell Steven and Frey for the court reporter.

21 A. S-t-e-v-e-n. And Frey is F-r-e-y.

22 Q. Where did you say you were employed?

23 A. Raleigh County Sheriff's Office.

24 Q. What state is Raleigh in?

25 A. West Virginia.

1 Q. Is there a city Raleigh County is in?

2 A. Beckley.

3 Q. And how did you get here today?

4 A. I drove.

5 Q. How long did it take you -- did you come from Beckley?

6 A. I did.

7 Q. How long did it take you to get here?

8 A. Just over two hours.

9 Q. And how long have you been with the sheriff's office

10 there in Raleigh County?

11 A. Just over four years.

12 Q. What were you doing before that?

13 A. College.

14 Q. And do you have any other jobs or occupations that you

15 do?

16 A. Yes. I'm in the West Virginia Army National Guard, full

17 time.

18 Q. I want to focus on your duties as a sheriff's deputy.

19 What are some of your duties in Raleigh County?

20 A. Road patrol is mostly what we do. We answer 911 calls,

21 serve civil papers, DBDs, stuff like that.

22 Q. What's the range of call you might respond to on any

23 given day?

24 A. Anywhere from burglaries to overdoses to homicides.

25 Q. Are you familiar in your job with the term "DOA"?

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1 A. Yes.

2 Q. What's that mean?

3 A. Dead on arrival.

4 Q. I'd like to talk to you about an individual named Heather

5 Hartshorn. Are you familiar with that name?

6 A. Yes.

7 Q. And were you on duty with the Raleigh County Sheriff's

8 Office on the morning of February 2nd -- February 22nd, 2017?

9 A. I was, sir.

10 Q. And what were you doing that day?

11 A. Just road patrol.

12 Q. Did -- at some point in time in the morning did you

13 respond to a call?

14 A. I did.

15 Q. What was that call about?

16 A. It was an unattended DOA.

17 Q. Dead on arrival?

18 A. Yeah.

19 Q. About what time did you receive that call?

20 A. It was right around 6:00.

21 Q. And what did you do once you got that call?

22 A. That's when I immediately headed that direction to the

23 scene.

24 Q. What was the area that you were asked to go to about this

25 dead on arrival?

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1 A. It was rural, rural area.

2 Q. Do you remember the town?

3 A. I know it's Bolt. That's what I remember.

4 Q. So is Bolt in Raleigh County?

5 A. It is.

6 Q. So just tell the jury about what happened when you first
7 arrived at this home in Bolt?

8 A. So when I first arrived, EMS was already at the scene, so
9 I knew that's the location I was supposed to be at. As soon
10 as I walked in the door, I was met with Heather Hartshorn's
11 mother. She informed me that she tried to --

12 Q. Sir, let me stop you. I don't want to get into what
13 other people told you.

14 A. Okay. Got you.

15 Q. So you arrived.

16 A. Right.

17 Q. Was there a victim at the scene?

18 A. There was.

19 Q. Who was that?

20 A. It was Heather Hartshorn.

21 Q. How did you know it was Heather Hartshorn?

22 A. Because I found her I.D. on scene.

23 Q. Can you describe the scene when you arrived.

24 A. Yes. She was laying on her back. There was a mattress
25 that was in her bedroom and it was just laying on the floor.

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1 She was laying on her back beside that mattress.

2 Q. Was she dead or alive?

3 A. She was dead.

4 Q. How did you know?

5 A. Because EMS had already tried to resuscitate her when
6 they got on scene because that's part of their SOPs, or their
7 procedures, and they told me that they didn't -- she was
8 non-responsive. And she was non-responsive when I walked in
9 as well.

10 Q. When you said she was non-responsive, what's that mean?

11 A. That means she was not moving, not breathing. She was
12 cold to the touch.

13 Q. So you touched her?

14 A. Yes.

15 Q. What state was her mother in?

16 A. She was upset. Very upset.

17 MR. JUHAN: Ms. Vogt, may we pull up what's already
18 been admitted as Exhibit HH-298 for the witness and the jury.

19 BY MR. JUHAN:

20 Q. Sir, what is the name on this document?

21 A. Heather Hartshorn.

22 Q. And what is the drug listed on this document?

23 A. Oxycodone, 30 milligrams.

24 Q. And what is the date on this document?

25 A. 2-20-17.

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1 Q. And then on the upper right-hand corner, what is that
2 date?

3 A. 2-21-17.

4 Q. And the day you were at Heather Hartshorn's home was
5 2-22-17?

6 A. Correct.

7 MR. JUHAN: We can take that down.

8 BY MR. JUHAN:

9 Q. Did you find any oxycodone at the home that Heather
10 Hartshorn was at when she was dead?

11 A. I did not.

12 Q. Did you find other medication?

13 A. I did.

14 Q. Where was it?

15 A. It was on the kitchen table, all together.

16 Q. Sir, as part of your duties when you arrived on the
17 scene, did you take any photographs?

18 A. I did.

19 MR. JUHAN: Your Honor, I'm going to put what's been
20 marked and shown to counsel as Government's Exhibit 106.

21 THE COURT: All right.

22 BY MR. JUHAN:

23 Q. Would you please take a moment and flip through that
24 exhibit.

25 Sir, do you recognize what that exhibit is?

1 A. Yes.

2 Q. What is it?

3 A. Those are pictures I took at the scene.

4 Q. And is it a fair and accurate depiction of what was there
5 at the scene?

6 A. Yes, sir.

7 MR. JUHAN: Your Honor, at this point the Government
8 would move for admission of 106.

9 THE COURT: It will be admitted.

10 (Government's Exhibit 106 received.)

11 MR. WILLIAMS: No objection.

12 MR. JUHAN: Madam Clerk, may I use the ELMO?

13 Permission to publish, Your Honor.

14 THE COURT: Yes.

15 BY MR. JUHAN:

16 Q. I'd like to go through each of these pictures with you,
17 sir, just briefly.

18 What's this a picture of, the first page?

19 A. Three medications that were on the table that I took.

20 Q. And what's the name on those medications?

21 A. I can't really make them out.

22 Q. Sorry.

23 A. Oh, Heather Hartshorn.

24 Q. And what does it say at the top of these -- that
25 prescription on the left-hand side?

- 1 A. Hayes Drug.
- 2 Q. The second page, is that more --
- 3 A. That's more, different.
- 4 Q. On the left-hand side, what does that say?
- 5 A. Hayes Drug.
- 6 Q. The third picture, what is that?
- 7 A. Hayes Drug, with Heather Hartshorn's name on it.
- 8 Q. Is it a bottle?
- 9 A. It is.
- 10 Q. What is this fourth page a picture of?
- 11 A. So that's a picture of the mattress that's on the floor
- 12 that she was sleeping on.
- 13 Q. What is this fifth picture a picture of?
- 14 A. That is the victim laying beside that mattress in her
- 15 bedroom.
- 16 Q. When you say victim, you mean Heather Hartshorn; right?
- 17 A. Yes.
- 18 Q. What's this sixth picture here?
- 19 A. That's the mattress as well.
- 20 Q. What it is the seventh picture?
- 21 A. Heather Hartshorn laying on the floor of her bedroom.
- 22 Q. What's this eighth picture?
- 23 A. That's Heather.
- 24 Q. What's this ninth picture?
- 25 A. A close-up of Heather.

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- 1 Q. What's this tenth picture?
2 A. That's from a different angle of Heather.
3 Q. What's this 11th picture?
4 A. Different angle of Heather.
5 Q. What's this 12th and last picture?
6 A. That's Heather on the floor.

7 MR. JUHAN: Sir, if you would please answer any
8 questions that Mr. Williams has for you.

9 **CROSS-EXAMINATION**

10 BY MR. WILLIAMS:

- 11 Q. Good morning, Officer Frey. How are you?
12 A. Good. How are you?
13 Q. Thank you, good. Fine.

14 Now, when you arrived there on February 22nd, 2017,
15 you said that Heather's mother was there; correct?

16 A. Correct.

- 17 Q. Okay. Was there anyone else that was present?
18 A. I believe there was a male figure there. I can't
19 remember if it was her father or stepfather. He was older.
20 Q. Okay.
21 A. But I can't remember his name.
22 Q. Okay. Did you receive -- did you do any investigation on
23 this matter?
24 A. Yes.
25 Q. Did you?

1 A. I did.

2 Q. Was there reports of a boyfriend that she had been with
3 the night before?

4 MR. JUHAN: Objection. Hearsay.

5 THE COURT: I'll overrule the objection.

6 THE WITNESS: Not that I recall.

7 BY MR. WILLIAMS:

8 Q. Nothing that you recall about a boyfriend or anything?

9 A. Nothing that I recall, no.

10 Q. Okay. Did you recall anything about -- was there
11 anything about Xanax bottles --

12 A. Yes.

13 Q. -- or prescribed Xanax?

14 A. Yes, her mother stated that--

15 MR. JUHAN: Objection. Hearsay.

16 THE COURT: I'll overrule the objection.

17 THE WITNESS: Her mother stated she was prescribed
18 Xanax, but I didn't find any at the scene.

19 BY MR. WILLIAMS:

20 Q. Okay. You did not find the bottle there at all?

21 A. No, sir.

22 Q. Did you pursue that in any part of the investigation?

23 A. No. Not any further than that, no.

24 MR. WILLIAMS: Okay. May I have a moment?

25 ///

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1 BY MR. WILLIAMS:

2 Q. Were there two bottles of -- you said oxycodone and
3 oxymorphone, were the bottles there?

4 A. No.

5 Q. They were not?

6 A. No. I didn't see no Xanax or oxycodone bottles there.

7 Q. Okay. All right. So was there an oxymorphone bottle
8 there?

9 A. No, not that I recall.

10 Q. Not that you recall.

11 MR. WILLIAMS: Thank you. No further questions.

12 THE COURT: Anything further?

13 MR. JUHAN: Nothing further, Your Honor.

14 THE COURT: May this witness be excused?

15 MR. JUHAN: Yes.

16 THE COURT: Thank you, sir. You may be excused.

17 You may call your next witness.

18 MR. JUHAN: Your Honor, the United States calls Juan
19 Angel.

20 THE CLERK: Please raise your right hand.

21 Do you solemnly swear that the testimony you're
22 about to give in this case shall be the truth, the whole
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: You may be seated.

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1

JUAN ANGEL,

2 Called as a witness herein by the Government, having been
3 first duly sworn, was examined and testified as follows:

4

DIRECT EXAMINATION

5 BY MR. JUHAN:

6 Q. Hi, sir. Would you please introduce yourself to the
7 jury.

8 A. Juan Angel.

9 Q. And if you could just try and speak into the microphone.

10 A. Okay. Yes, sir.

11 Q. Sir, where do you live?

12 A. Me? I live --

13 Q. Not your address, your city.

14 A. Anderson.

15 Q. Anderson. What state?

16 A. South Carolina.

17 Q. Okay. Did there come a time when you were living in
18 Martinsville, Virginia?

19 A. Yes, sir. Correct.

20 Q. When would that have been?

21 A. Last year. Let's say I moved last summer, I believe.

22 Q. But you were living in Martinsville before then, or
23 around that area?

24 A. Yes, sir. Oh, yeah. I went to school there and
25 everything, yes, sir.

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1 Q. Okay. So 2015 through what, 2017, were you --

2 A. Yes, sir.

3 Q. Did you have family in the Martinsville area?

4 A. Yes, sir. Correct.

5 Q. What was your family in Martinsville?

6 A. I'm sorry?

7 Q. What family did you have in Martinsville?

8 A. I have my parents, my sister, and my -- and an uncle, my

9 cousins.

10 Q. Okay. When you were living in Martinsville, did one of

11 your family members own a restaurant?

12 A. Yes, sir. Correct. Yeah.

13 Q. Which one was that?

14 A. Jose, my Uncle Jose.

15 Q. Did you ever work there?

16 A. Yes, sir.

17 Q. What kind of work did you do for your uncle?

18 A. I was a waiter. Every now and then, I worked -- whatever

19 he needed me to also, bus tables, whatever, yeah.

20 Q. At the time -- I think you mentioned -- did you mention

21 college a moment ago?

22 A. College?

23 Q. I'm sorry.

24 A. No, sir.

25 Q. At the time you were working for your uncle, what was

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1 your level of education?

2 A. High school diploma.

3 Q. Okay. And then after you worked for your uncle -- what

4 was the name of the restaurant where you worked?

5 A. El Parral.

6 Q. After you worked at El Parral, what did you do for a job

7 after that?

8 A. After? Well, Wendell offered me a job with Dr. Smithers.

9 Q. Okay. So you went to work for Dr. Smithers?

10 A. Yes, sir. Correct.

11 Q. Does -- what -- about what time of the year did you go

12 work for Dr. Smithers?

13 A. That's hard to remember.

14 Q. Would early 2017 sound about right?

15 A. Yeah, around so's. I'm trying to think, around the

16 beginning of that area.

17 Q. Okay. And how long did you work for Dr. Smithers?

18 A. Months. I can't remember how many exactly. Between

19 five, six months maybe. Four to six months maybe.

20 Q. Okay. So when you were working for Dr. Smithers, who

21 else was employed in the office there besides you and him?

22 A. At the moment, it was just me, Wendell, and Peter.

23 Q. And what's Peter, do you know his last name?

24 A. No, sir.

25 Q. Do you know Wendell's last name?

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1 A. Wilson. Correct? Yeah.

2 Q. And was Peter working there the whole time you were there
3 with Dr. Smithers?

4 A. No, sir. In the beginning he was, and he ended up
5 leaving.

6 Q. Were there any -- so all those people you mentioned,
7 they're all male; correct?

8 A. Correct.

9 Q. So I think you started to get into this a moment ago, but
10 tell the jury how it is you came to work for Dr. Smithers.

11 A. I was working at the restaurant, at my uncle's
12 restaurant. And I was at the bar that day. We were just
13 talking. He was, like, just trying to help me out --

14 Q. Please stop, sir.

15 A. Yeah.

16 Q. Who were you interacting with?

17 A. Wendell. Yeah, Wendell had offered me a job, a better
18 career than being a waiter. Of course, that caught my
19 attention. I didn't want to be a waiter the rest of my life.

20 Q. Understandable.

21 Did you -- had you -- when was the first time you
22 met Wendell?

23 A. It was months prior to that. Maybe two, three months.
24 He came in -- he's come into the restaurant, order food, eat,
25 and go on his way. A few times he offered -- well, not

1 offered, but told me about the job.

2 Q. So you just knew him as a patron at the restaurant?

3 A. Yeah, correct. As a customer, yes, sir.

4 Q. So after Wendell talks to you about this opportunity,
5 what happens then? How does that develop?

6 A. It just -- I let my uncle know. Got -- you know, let him
7 know, maybe give him a week or so. Then I went to the office.
8 And then, pretty much at first Wendell showed me around and
9 then Peter was trying to teach me the rest of the stuff.

10 Q. What kind of paperwork did you have to fill out before
11 you started working at Dr. Smithers's office?

12 A. I can't remember.

13 Q. Do you remember testifying in the grand jury in this
14 case?

15 A. I'm sorry?

16 Q. Do you remember testifying under oath previously in this
17 case?

18 A. Yes, sir. Correct.

19 Q. Do you think if I showed you some of your testimony it
20 might jog your memory about what kind of paperwork you had to
21 fill out?

22 A. Maybe. Yes, sir.

23 Q. Sir, I'm going to approach you with page 6, lines four
24 and five of your grand jury testimony. If you could just read
25 those to yourself, not aloud, please.

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1 Does that refresh your recollection about what kind
2 of paperwork you had to do for Dr. Smithers?

3 A. Yes, in a way.

4 Q. So what kind of paperwork did you have to fill out?

5 A. For being an employee paperwork?

6 Q. Yeah.

7 A. Not that I remember, not anything.

8 Q. Okay. Did you interview with Dr. Smithers before you
9 started there?

10 A. Yes, I did.

11 Q. Before you started with Dr. Smithers, had you ever worked
12 in the medical profession before?

13 A. No, sir.

14 Q. Did you have any, like, classes or certifications
15 regarding the medical profession?

16 A. No, sir.

17 Q. Okay. So without prior medical experience and with no
18 paperwork, what job did Dr. Smithers hire you to do?

19 A. At first it was drug screening.

20 Q. Okay.

21 A. He told me that I had to learn a few procedures and all
22 this stuff. That it was mandatory to be in the bathroom with
23 them.

24 Q. What about -- you said at first you did drug screening,
25 what about later?

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1 A. Well, once Peter left, I did the receptionist. So I gave
2 them their dates and receipts and stuff, yeah.

3 Q. Once Peter left and you began to be a receptionist, did
4 you continue on with your drug screening duties or did
5 those --

6 A. Yeah, I did.

7 Q. How much did you get paid by Dr. Smithers?

8 A. So, if I remember correctly, around the beginning when
9 Peter was there, it was probably around 400. Around there.
10 And then after Peter left, around 600, 500 to 600.

11 Q. Was that a month? A week? Or --

12 A. Weekly.

13 Q. And what was the method of payment that you would receive
14 from Dr. Smithers?

15 A. Cash.

16 Q. Okay. Bills?

17 A. Yes, sir. Correct.

18 Q. And so how would -- how would you get the cash?

19 A. At the end of the night he'll -- after we close out and
20 do everything, he would just pay me.

21 Q. He would pay you?

22 A. Correct. At the end of the week, of course. Yeah.

23 Q. I'd like to talk to you a little bit -- let me stop
24 there.

25 Did Dr. Smithers ever pay you any other way besides

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1 handing you cash?

2 A. No. Just cash and that was it.

3 Q. Okay. I'd like to talk a little bit about patient
4 payment.

5 A. Mm-hmm.

6 Q. We talked about your payment.

7 How much did Dr. Smithers charge for a patient
8 visit?

9 A. That's a hard one to remember. 300. I can't remember.

10 Q. Okay.

11 A. It was around there, yeah.

12 Q. Around 300?

13 A. Yes, sir.

14 Q. How much of that would insurance pay for?

15 A. I'm sorry?

16 Q. Would insurance pay for any of that?

17 A. Well, we would do copies of the insurance cards and send
18 them off. I don't know if they ever -- I don't know how that
19 works or anything. I just receive the payments and receipts,
20 and bam.

21 Q. Okay. Do you remember testifying in the grand jury that
22 Dr. Smithers's office didn't take insurance?

23 A. They didn't take insurance? Well, we used to, like, take
24 their insurance cards and fax them to the insurance companies,
25 I guess. I don't know.

1 Q. Not really sure now?

2 A. Not really sure anymore, yeah.

3 Q. Okay.

4 A. It's been a while, yeah.

5 Q. How would these patients pay for the \$300 visit?

6 A. What do you mean how would they pay? Like, cash?

7 Q. Cash?

8 A. Cash. Correct. Some would use also debit cards, I believe. Yeah.

9

10 Q. Who would collect the cash from the patients?

11 A. In the front, I would collect them and put them in the

12 drawer.

13 Q. And what would you do with it once you collected it?

14 A. Just leave them in the drawer and put it in the back

15 office.

16 Q. Okay. So where is this drawer that you're talking about?

17 A. If I remember, it was in the back room -- or one of the

18 back rooms, yeah.

19 Q. Was there any way to document this influx and flow of

20 money coming through you? What was done, if anything?

21 A. I'm sorry?

22 Q. How was the money documented?

23 A. Oh, receipts. And the -- receipt books. That's where we

24 keep it at, yeah.

25 Q. Did all of that money go to Dr. Smithers?

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1 A. Yeah.

2 Q. What about Wendell?

3 A. I don't know about Wendell, no. I just -- yeah, I don't
4 know about that.

5 Q. How would you package, or bundle, or contain the money?

6 A. Well, it was -- it was a silver container. I would just
7 have a key for it, open it, and just throw the money in there.

8 Q. Do you remember ever going and depositing any of the
9 money into Dr. Smithers's account?

10 A. Yeah. Every now and then I would. Probably a couple
11 times I did.

12 Q. How would that work?

13 A. Just go to the -- wherever bank it was -- or credit union
14 or whatever, and write his information down and put it in an
15 envelope and just deposit it.

16 Q. So how -- would he pay you to do this? Were you doing
17 this on your own?

18 A. I'm sorry?

19 Q. How did that come about? Did you just do this on your
20 own or --

21 A. No, he would tell me to do it for him.

22 Q. What were your hours?

23 A. I'm sorry?

24 Q. What were your hours when you worked?

25 A. I would come in at 7:00 in the morning. And in the

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1 afternoon it would vary. Sometimes 5:00, sometimes 6:00,
2 7:00.

3 Q. So, at least a 40-hour workweek then; right?

4 A. Definitely, yeah. Yes, sir.

5 Q. You're a hard worker, aren't you?

6 A. I'm sorry?

7 Q. You're a hard worker; right?

8 A. Yes, sir. Have to.

9 Q. You mentioned your job as a drug tester, I want to focus
10 on that a little bit more.

11 A. Okay.

12 Q. About how many drug tests would you administer every day?

13 A. Every day? Every single patient we got that day, so from
14 10 to 15.

15 Q. What about blood samples?

16 A. I never worked with that -- I never touched any patient
17 to draw blood or anything since I didn't have no -- I didn't
18 have no way to do it. So, no, I didn't want to touch them,
19 yeah.

20 Q. Now we talked earlier about who worked at the clinic.

21 A. Hmm-mmm.

22 Q. There were some females that would come in as patients;
23 correct?

24 A. Correct. Yes, sir.

25 Q. But only the males -- only males worked there?

1 A. Correct. Yes, sir.

2 Q. And so when a female had to get drug tested, would you
3 watch the female urinate?

4 A. No.

5 Q. That's kind of important though; right?

6 A. Yes, sir, it is. I think we were supposed to have a lady
7 come in and supervise them.

8 Q. But that didn't happen, did it?

9 A. No, sir.

10 Q. So there's not really any way to know if it was -- people
11 were cheating on their screens or not?

12 A. Females, it was harder, yeah. I would just be beside the
13 door and try to and listen out for any possibility that would
14 lead to -- for them to, you know, try and pass their drug
15 screens.

16 All the males, I would be in the bathroom with them,
17 yeah.

18 MR. JUHAN: Your Honor, may I have one moment,
19 please?

20 THE COURT: Yes, sir.

21 BY MR. JUHAN:

22 Q. Sir, you testified earlier that you started working for
23 Dr. Smithers in early 2017; correct?

24 A. Mm-hmm.

25 Q. I need you to answer verbally.

1 A. Yes, sir. Correct. Sorry.

2 Q. Did there come a time when you were working there there
3 was a search warrant executed on Dr. Smithers's office?

4 A. Not that I remember.

5 Q. You don't remember --

6 A. Like, before they came in? Like, if there was a search
7 warrant or anything?

8 Q. I'm just asking, during the time you were employed by
9 Dr. Smithers, do you remember that there was a search warrant
10 that happened at the office?

11 A. I remember coming -- yeah, they coming in and searching
12 for him, yes, sir.

13 Q. And then shortly after that time is when Mr. Peter --
14 Peter, as you know him?

15 A. Yes, sir.

16 Q. That's when he left?

17 A. Yes, sir. He didn't come back. Yeah.

18 MR. JUHAN: Please answer any questions that the
19 defense attorney has, okay?

20 THE WITNESS: Yes, sir.

21 MR. JUHAN: Thank you.

22 **CROSS-EXAMINATION**

23 BY MR. WILLIAMS:

24 Q. Morning, Mr. Angel, how are you?

25 A. Hello.

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1 Q. You stated you worked for Dr. Smithers for what, four or
2 five months? Was that what you said?

3 A. Around so, I'm trying to remember, yeah.

4 Q. Okay. And you liked working with Dr. Smithers, didn't
5 you?

6 A. Yeah, it wasn't bad. Yes, sir, it was good, yeah.

7 Q. He was good to you, wasn't he?

8 A. Very good, yes, sir.

9 Q. Okay. There was even times he advanced you some money?

10 A. Yeah. When I needed to, yeah. When I had to pay some
11 bills or I wasn't -- yeah, I had to get -- because I was used
12 to a waiter, having tips, having cash on me. Yeah. So the
13 weekly payment, yeah, he would help me out sometimes.

14 Q. Now, you stated you were in charge of -- they kind of had
15 you helping with drug screens; is that right?

16 A. Yes, sir. Correct.

17 Q. Okay. What was your role exactly in the drug screens?
18 Were you doing the actual testing, or were you doing just
19 helping supervise while they got the samples or what?

20 A. Not actually testing them. Well, we collected samples,
21 we were supposed to send them off. And we did send them off.
22 But, yeah, some companies are funny about the --

23 Q. Got you.

24 Now with respect to a test, how would the test go?
25 Describe how you would do the test to the jury.

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1 A. If I remember, I used to take them to the back, empty all
2 their pockets. Empty every single thing out. Check their
3 hats. Check their collars, everything. After that, if they
4 were male, go in the bathroom with them, actually see them use
5 the bathroom. And have them urinate in the container.

6 Q. Okay.

7 A. We sealed it up and bagged it up and sent it off to the
8 companies.

9 Q. Okay. Now with respect to a female, how would that
10 differ?

11 A. Same process everything, besides me not stepping in the
12 bathroom.

13 Q. Okay.

14 A. I would just be outside the door and listening for
15 anything, like, bag noises, anything that could cause to them
16 trying to pass their test.

17 Q. Anything in your suspicion might be adulterating the
18 screen; correct?

19 A. Yes, sir.

20 Q. So once you would -- once they come out and hand you the
21 sample, what would happen at that point?

22 A. At that point I would seal it, put their name, birth of
23 date, all their information, bag it up, seal it, and send it
24 off to the drug screening companies.

25 Q. Now, did y'all do on-site testing?

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1 A. I'm sorry?

2 Q. Did y'all do on-site test?

3 A. For the ones that looked suspicious. We caught a few.

4 Strips or -- I can't remember exactly what it was. There was

5 one or two looked really iffy, so we would test them out to

6 see if something will come up. And sure enough, we caught a

7 couple people trying to pass their drug test, a few, yeah.

8 Q. Was there another way besides just doing the little test

9 strip or something, that you would check for it?

10 A. No. Just a temperature, too.

11 Q. Okay. So you checked the temperature?

12 A. Yes, sir. Yes, sir. I had a temperature --

13 Q. Explain to the jury why temperature would be important.

14 A. Temperature is important because if you urinate, of

15 course, it's warm. So it would have to be in between a

16 certain degree. If it was too low, it was cold, they probably

17 had fake urine or mixed it. And then if it was too hot, they

18 probably had a fake urine, trying to keep it hotter than

19 usual.

20 Q. Okay.

21 A. So, yeah.

22 Q. Now, were there times you might look at a sample, you

23 might set it there for a few minutes to check it?

24 A. Yeah, we did.

25 Q. Why would you do that?

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1 A. To make sure they wouldn't pass -- to make sure they
2 wouldn't -- I don't know how to explain it. So they wouldn't
3 pass the drug screen if they're --

4 Q. Try and crush a pill and put something in --

5 A. -- to try to pass their drug screen, yeah. Like I said,
6 there was a few that we caught that looked really iffy, so,
7 yeah.

8 Q. So you had several ways that you tried to legitimately
9 catch people, didn't you?

10 A. Yes, sir. Correct. And we caught a few, yeah.

11 Q. Okay. And were there a couple of females that you caught
12 that were actually arrested?

13 A. Yeah.

14 Q. Do you recall those names by any chance?

15 A. I can't remember.

16 Q. Okay.

17 A. Not good with names.

18 Q. All right. But you actually had called the Sheriff's
19 Department and had them come out?

20 A. Yes, sir.

21 Q. And a couple times -- do you recall what they were doing?

22 A. I think she tried to crush something in her urine. Her
23 urine didn't look right, so, yeah.

24 Q. Okay.

25 A. Then we went from there. I had -- when that happened, I

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1 got Wendell, then Wendell helped me with the rest, like the
2 procedure of that.

3 Q. Okay. Now, at the time you were working there, did you
4 have a lot of female patients or was it primarily male
5 patients?

6 A. Mainly male. A few women, yeah. There was a good bit of
7 women, yeah.

8 Q. Okay. Did the -- when you would work, where would you
9 stay in the office? Where would your office be in relation
10 to, say, where the exam rooms would be?

11 A. Well, I really didn't have an office. I was just -- the
12 drug screen was in this hallway beside the bathroom, where we
13 had all the equipment, all the drawers with all the equipment
14 and stuff like that. I really didn't have an office-office.

15 Q. Now, did you also worked -- you said you worked reception
16 after Peter left; is that correct?

17 A. Correct. Yes, sir.

18 Q. Where was that in relation to the exam room?

19 A. Probably 20, 30 steps or so, probably.

20 Q. Okay.

21 A. Yeah.

22 Q. Now, were there any first-time patients that came in
23 while you were there, while you worked there?

24 A. I think so. I believe there were a few, or a couple
25 maybe.

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1 Q. Okay. How long would Dr. Smithers take with those
2 patients?

3 A. With the new patients, he would take a while, yeah.

4 Q. Okay. When you say a while --

5 A. Hours.

6 Q. -- approximately -- hours?

7 A. About an hour, two, maybe.

8 Q. So he would be back there with them.

9 A. Consulting.

10 Q. And you wouldn't be back there at the time.

11 A. No, sir. They would close the door and they would talk
12 and consult their --

13 Q. Now, I think you said and testified just a minute ago
14 that you drug tested every person; is that right?

15 A. I should have, yeah. Or the ones that were supposed to.
16 Some, you know, had their risk levels or risk levels, some are
17 higher than others. Some we would do every week, some we
18 would do every two weeks. Yeah, so it was like that.

19 Q. And what would cause a risk level to go up?

20 A. Anything that could alternate, like, their urine or
21 maybe -- anything suspicious, like, towards --

22 Q. Pill counts being off?

23 A. Yep, that too. Very -- that's the main one, yeah. Yes,
24 sir.

25 Q. And so you-all did pill counts with patients that come

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1 in?

2 A. I didn't. Joel Smithers and Wendell, I believe.

3 Q. Okay.

4 A. Or one of them two, yes, sir.

5 Q. Okay.

6 MR. WILLIAMS: May I have just a moment, Your Honor?

7 BY MR. WILLIAMS:

8 Q. Did -- how long were you there when Peter was there?

9 A. I think it was recent. Just two, three months --

10 Q. Okay.

11 A. -- that I was there before Peter left.

12 Q. Okay. Did Peter mention anything to you about a
13 relationship with Shannon Kovaleski?

14 A. No, not that I -- no, sir.

15 MR. WILLIAMS: Okay. All right. No further
16 questions, Your Honor.

17 THE COURT: Anything further?

18 MR. JUHAN: Just briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 BY MR. JUHAN:

21 Q. You'd only worked with Dr. Smithers for a few weeks
22 before the search warrant happened; right?

23 A. I'm sorry?

24 Q. You had worked for Dr. Smithers for only a few weeks
25 before there was a search warrant?

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1 A. Correct. Yeah.

2 Q. And Mr. Williams was talking to you a little bit about

3 some of the patients. Where were some of these patients from?

4 A. Different places. West Virginia, Kentucky, and some

5 Virginia, too, I believe.

6 Q. What about Ohio?

7 A. Yeah, a couple.

8 Q. Kind of weird, isn't it?

9 A. Yeah, very. Long ways away, yeah.

10 Q. When would Dr. Smithers come into the office?

11 A. Sometimes in the morning. Sometimes --

12 Q. Sometimes?

13 A. Well, whenever he came in the mornings and then usually

14 he'll come later in the afternoons, if he had -- like, was

15 doing other errands and stuff.

16 Q. So usually would not be there some mornings?

17 A. Yeah. That's why some patients would wait a few -- a

18 couple hours before, or an hour before he would be there,

19 yeah.

20 Q. But you were there all day.

21 A. Yes, sir. Correct.

22 MR. JUHAN: No further questions, Your Honor.

23 THE COURT: Anything further, Mr. Williams?

24 MR. WILLIAMS: Just maybe a question or two.

25 ///

RECROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Angel, were there situations where patients would just choose to show up early?

A. Well, I would have a few that would show up early, yeah.

Q. You would arrive what time normally?

A. Try to be there at 7:00 every morning.

Q. Were there times when there were patients there waiting for you?

A. Yes, sir. Correct.

11 MR. WILLIAMS: No further questions.

12 MR. JUHAN: We'd just ask him to be subject to
13 recall, Your Honor.

14 THE COURT: All right. Mr. Angel, you can leave
15 now. It may be necessary for you to return. If you are asked
16 to return, you must.

17 THE WITNESS: I'd be more than happy to.

18 | THE COURT: Thank you, sir. You may step down.

19 All right. Mr. Juhan, we need Exhibit 106, the
20 photographs. The clerk needs to keep those.

21 All right. The Government may call its next
22 witness.

23 MR. LEE: Your Honor, the Government calls Patrick
24 Long.

25 THE CLERK: Please raise your right hand.

1 Do you solemnly swear that the testimony you're
2 about to give in this case shall be the truth, the whole
3 truth, and nothing but the truth, so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: You may be seated.

6 **PATRICK LONG,**

7 Called as a witness herein by the Government, having been
8 first duly sworn, was examined and testified as follows:

9 **DIRECT EXAMINATION**

10 BY MR. LEE:

11 Q. Good morning, sir.

12 A. Good morning, sir.

13 Q. Please introduce yourself to the members of the jury.

14 A. My name is Patrick Long. I'm a special agent with the
15 Drug Enforcement Administration.

16 Q. Agent Long, have you been involved in the investigation
17 of Dr. Smithers for the course of the investigation?

18 A. Not from the very beginning, but shortly after it began,
19 yes, sir.

20 Q. All right. And how did you become involved?

21 A. My boss, who is in Roanoke, asked me to assist with the
22 investigation very shortly after it had started. The original
23 complaint had started out of our Roanoke office. I'm actually
24 housed in Bristol. Once that investigation began, my boss
25 asked me if I would assist on that.

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1 Q. Okay. And if you would, give the members of the jury a
2 little bit of your history as a law enforcement officer, both
3 in local law enforcement and as a DEA agent.

4 A. I started in 1994 in South Carolina as a police officer.
5 And between 1994 and 2005, I worked in various levels as a
6 municipal police officer, a deputy sheriff, as well as an
7 instructor at the police academy in South Carolina. In
8 January of 2005, I was hired by DEA as a diversion
9 investigator. In 2008, I transitioned core series from
10 diversion investigator to a special agent.

11 Q. And what are your responsibilities as a special agent?

12 A. Basically investigate and enforce the Controlled
13 Substances Act. Drug Enforcement Administration is one of the
14 only single, I guess -- I can't think of the word I'm looking
15 for. It has one mission, essentially, and that is the
16 Controlled Substances Act.

17 Q. And do you specifically focus on what's termed "drug
18 diversion"?

19 A. That's correct, sir.

20 Q. Would you please provide the jury with a laymen's summary
21 of what that term means.

22 A. Through the Controlled Substances Act, through the code
23 there is established -- with the code and the regulations that
24 are founded on the code, there is a cycle of distribution
25 where essentially DEA can follow the importation of raw

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1 material through the manufacturing and distribution process,
2 all the way through to the end user. So we call that aside
3 from distribution, anything that comes out of that legitimate
4 or legal cycle of distribution is what we term as diversion.
5 As diversion investigators or even special agents that are
6 assigned to diversion groups, which I am, our focus is to
7 identify those times when the controlled substances are
8 diverted outside of that cycle of distribution and investigate
9 those instances.

10 Q. And is it fair to say that the majority of your focus is
11 on healthcare providers, physicians, pharmacists, drug
12 manufacturing companies?

13 A. It happens to be our -- our official focus is on people
14 who hold DEA registration, which happens to be those that are
15 in the pharmaceutical and healthcare group. And that
16 includes, again, those importers of raw material, the
17 manufacturers, the distributors, pharmacies, and
18 practitioners, as well as hospitals and clinics and
19 researchers.

20 Q. And you said that you're stationed in the Bristol office;
21 is that correct?

22 A. I am stationed in the Bristol office, yes, sir.

23 Q. And your, I guess, area that you cover, geographic area,
24 is what's considered the Western District of Virginia?

25 A. That's correct, sir.

1 Q. And is Martinsville, Virginia, in the Western District of
2 Virginia?

3 A. Yes, sir, it is.

4 Q. Is that pretty much the entire western half of the state
5 of Virginia?

6 A. Pretty much, yes, sir.

7 Q. And finally, just as background in case this term is
8 thrown around, or may have been thrown around earlier when we
9 introduced you, are you one of a couple different case agents
10 on the Dr. Smithers investigation?

11 A. That's correct, sir.

12 Q. And what does that mean?

13 A. Through our reporting -- our reporting system establishes
14 sort of a primary case agent and a co-case agent. And then we
15 also can have attached to an investigation other persons
16 called case agents who sort of dedicate a lot of time to an
17 investigation, as well as an intel analyst.

18 Q. Okay. Is it fair to say that through your position as
19 one of a few case agents on this investigation, you supervised
20 the majority of the investigation and are aware of the
21 majority of the things that occurred during the investigation?

22 A. I'm aware of the majority of things, yes, sir.

23 Q. Okay. And that being said, were you familiar with the
24 search warrant that was executed at Dr. Smithers's clinic in
25 Martinsville, Virginia?

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1 A. Yes, sir.

2 Q. Okay. And based upon that information, were you familiar
3 with some United States currency that was seized during that
4 search warrant?

5 A. Yes, sir, I am.

6 MR. LEE: If I could not show pictures to the jury.

7 THE CLERK: Is it going to be on the computer?

8 MR. LEE: Yes.

9 I'm going to ask Ms. Vogt to pull up Government's
10 Exhibit 99.

11 Your Honor, my understanding is Mr. Williams isn't
12 going to object to the admission of these pictures, so I'll
13 introduce them to the agent and have them shown to the jury as
14 I do that.

15 THE COURT: Very well.

16 MR. LEE: Government's Exhibit 99, please.

17 BY MR. LEE:

18 Q. Are you familiar with what that picture is of?

19 A. I'm waiting for it to come up.

20 Yes, sir.

21 Q. Okay. What is that?

22 A. That is U.S. currency that was found in a -- like a
23 banker's style bag which was housed in a book bag in a room
24 that was identified to us as Dr. Smithers's office.

25 MR. LEE: Your Honor, I move for the admission of

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1 Government's Exhibit 99.

2 THE COURT: It will be admitted.

3 (Government's Exhibit 99 received.)

4 MR. LEE: Government's Exhibit 100.

5 BY MR. LEE:

6 Q. Are you familiar with what that picture depicts?

7 A. Yes, I am.

8 Q. What is it?

9 A. That is an image of U.S. currency that was located in the
10 glove box of Dr. Smithers's vehicle.

11 MR. LEE: Move for the admission of Government's
12 Exhibit 100.

13 THE COURT: It will be admitted.

14 (Government's Exhibit 100 received.)

15 MR. LEE: If you could pull up Government's
16 Exhibit 101, please.

17 BY MR. LEE:

18 Q. Are you familiar with what that picture shows?

19 A. I believe that was U.S. currency that was found on the
20 counter, front counter in the reception office of
21 Dr. Smithers's office.

22 MR. LEE: Government's Exhibit -- Your Honor, I move
23 for the admission of Government's Exhibit 101.

24 THE COURT: It will be admitted.

25 (Government's Exhibit 101 received.)

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1 MR. LEE: Can you please bring up Government's
2 Exhibit 102, please.

3 BY MR. LEE:

4 Q. Are you familiar with what that depicts?

5 A. Yes, sir.

6 Q. What is that?

7 A. That is a photo that was taken during the search of
8 Dr. Smithers's residence. It is the interior of a safe. I
9 believe it was in one of the closets in the residence.

10 MR. LEE: Your Honor, I'd move for the admission of
11 Government's Exhibit 102.

12 THE COURT: It will be admitted.

13 (Government's Exhibit 102 received.)

14 MR. LEE: Ms. Vogt, if you could pull up
15 Government's Exhibit 22, please.

16 I'm sorry, that's my mistake.

17 BY MR. LEE:

18 Q. Agent Long, how much United States currency was seized
19 from both Dr. Smithers's clinic and his residence on the date
20 of the search warrant?

21 A. I believe it was approximately \$57,168.

22 Q. Do you remember what the date of the search warrant was?

23 A. March 7, 2017.

24 Q. Were joint search warrants executed at both
25 Dr. Smithers's clinic and his residence in the Greensboro,

1 North Carolina, area?

2 A. That's correct.

3 MR. LEE: Ms. Vogt, if you could pull up

4 Government's Exhibit 56, please.

5 BY MR. LEE:

6 Q. Agent Long, are you familiar with what Government's
7 Exhibit 56 depicts?

8 A. Yes, sir.

9 Q. What is it?

10 A. Those are various containers that were found in a book
11 bag in Dr. Smithers's vehicle. And inside these various
12 containers were a mixture of different tablets, pills, and
13 capsules.

14 Q. Okay.

15 MR. LEE: Your Honor, I move for the admission of
16 Government's Exhibit 56.

17 THE COURT: It will be admitted.

18 (Government's Exhibit 56 received.)

19 MR. LEE: Now Government's Exhibit 58, please.

20 BY MR. LEE:

21 Q. Are you familiar with what that picture demonstrates?

22 A. Yes, sir.

23 Q. What is it?

24 A. On the previous exhibit there was a tall, I think it's
25 a -- maybe a fish oil capsule, the larger bottle. That is a

1 depiction as we poured out all of the pills from that bottle
2 in order to process them and submit them to the lab.

3 Q. Okay. And the other bottles that were depicted in
4 Government's Exhibit 56, were they similarly filled with
5 multiple pills like this one was?

6 A. Similar, yes.

7 Q. Okay.

8 MR. LEE: Move for the admission of Government's
9 Exhibit 58.

10 THE COURT: It will be admitted.

11 (Government's Exhibit 58 received.)

12 MR. LEE: Defense Exhibit 59, please.

13 BY MR. LEE:

14 Q. Agent Long, if you would please explain what this picture
15 depicts.

16 A. In the -- in preparing drug exhibits to go to the lab, we
17 have to separate them by similar characteristics, by shape,
18 color, size, markings, inscriptions, scores. So this is sort
19 of a final image of that separation from the individual
20 containers that were found in Dr. Smithers's vehicle. And
21 they were ultimately packaged in these groupings to send to
22 our laboratory.

23 Q. So, for example, all of the pills -- and you can draw on
24 your screen -- that were found in the Mega DHA bottle that I
25 circled, where are those located?

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1 A. If I remember correctly, those are going to be, like,
2 these, and including some of those. (Indicating.)

3 Q. Okay. And --

4 A. And that top ridge there -- no, I believe that's correct.
5 I think the top paper is the smaller bottle.

6 Q. Okay. So then the others, bottles depicted and the
7 papers that they're on, they have the pills that were located
8 in those other bottles?

9 A. That's correct. Would you like me to draw those?

10 Q. Yes, please.

11 A. So the Altoids container would be that. There were two
12 nerve tonic bottles there. And then there was a Tylenol
13 bottle that had that (indicating).

14 MR. LEE: Your Honor, I can't remember if I
15 introduced Government's Exhibit 59 or not, but I do move to
16 introduce it at this time.

17 THE COURT: I'm sorry, I didn't hear you.

18 MR. LEE: I'm sorry, Judge. I'm not sure if I
19 already introduced or moved to introduce Government's
20 Exhibit 59. I would do so at this time.

21 THE COURT: It will be admitted.

22 (Government's Exhibit 59 received.)

23 BY MR. LEE:

24 Q. And, Agent Long, after you separated out these pills into
25 their different unique categories, there are a number of

1 labels for each grouping of pills. If you could explain to
2 the jury what those are.

3 A. So after we separated them out, my colleague and I would
4 do a search on the internet for the size, color, shape,
5 markings that were found on it. And we marked each pile with
6 what we presumed that drug was based on that search, and also
7 based on our experience and training. And we would write on
8 that sticker what we presumed the drug was so that when we
9 began packaging them and doing our paperwork, we could notate
10 that properly.

11 Q. Okay. As far as the drugs that you determined were
12 located in all these different bottles that you now separated
13 out into the individual units, did you find a number of
14 unscheduled, non-controlled substances?

15 A. We did. We -- there were a few that we couldn't -- they
16 had no markings on them. One I specifically remember was,
17 like, a clear gelatin capsule that had, like, a green powdery
18 substance in it. We presume that was some sort of supplement.
19 But there were a number of non-controlled substances there.
20 There were over-the-counter substances included, as well as
21 the controlled substances that we found.

22 Q. Okay. And based upon the examination that you did, were
23 you able to determine that there were two hydrocodone pills
24 within the vast number of pills that were --

25 A. Within the mix, yes, sir.

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1 Q. Okay. 92 hydromorphone pills?

2 A. Yes, sir.

3 Q. 19 oxycodone pills?

4 A. Yes, sir.

5 Q. 353 oxymorphone pills?

6 A. Yes, sir.

7 Q. One methadone pill?

8 A. Yes, sir.

9 Q. And 102 morphine pills?

10 A. Yes, sir.

11 Q. Okay. And those were all controlled substances; correct?

12 A. That is correct, sir.

13 Q. And all but the hydrocodone are Schedule II controlled

14 substances?

15 A. They're actually all Schedule II controlled substances.

16 Q. All right. Thank you.

17 And just to ensure that you-all's determination was

18 correct, did you also send off some of the samples for further

19 confirmation testing at the DEA lab?

20 A. We did request a sample of the exhibits to be analyzed.

21 Q. Okay. And did you receive certificates of analysis

22 indicating that those had been analyzed?

23 A. Yes, sir, we did.

24 MR. LEE: Ms. Vogt, if you could pull up

25 Government's Exhibit 76.

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1 BY MR. LEE:

2 Q. And if you could explain what's on the screen there.

3 A. This is a typical lab report that is generated from our
4 lab -- our lab, DEA's lab. The chemist will complete this
5 report, have it approved by supervision and then submit it
6 back to the field for our records.

7 MR. LEE Okay. If you could just blow up that
8 portion right there, Ms. Vogt.

9 Your Honor, I move for the admission of Government's
10 Exhibit 76.

11 THE COURT: It will be admitted.

12 (Government's Exhibit 76 received.)

13 BY MR. LEE:

14 Q. Agent Long, this certificate of analysis demonstrates
15 that the substance that was tested was oxymorphone; is that
16 correct?

17 A. Yes, sir, that's correct.

18 MR. LEE: If you could pull up Government's
19 Exhibit 77, please.

20 BY MR. LEE:

21 Q. Showing you Government's Exhibit 77, is that a similar
22 certificate of analysis for another set of pills that you had
23 analyzed to confirm on the testing?

24 A. Yes, sir, it is.

25 MR. LEE: Move for admission of Government's

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1 Exhibit 77.

2 THE COURT: Mr. Williams, as I understand, there's
3 no objection to the introduction of these lab reports.

4 MR. WILLIAMS: That's correct, Your Honor.

5 THE COURT: All right. It will be admitted.

6 (Government's Exhibit 77 received.)

7 BY MR. LEE:

8 Q. And this exhibit demonstrates that the tablets tested
9 contained oxymorphone?

10 A. That's correct, sir.

11 MR. LEE: Pull up 78, please.

12 BY MR. LEE:

13 Q. Showing you Government's Exhibit 78, is that another
14 certificate of analysis of additional pills that was sent to
15 confirm the controlled substances contained?

16 A. That's correct, sir.

17 MR. LEE: Your Honor, I move for the admission of
18 Government's Exhibit 78.

19 THE COURT: It will be admitted.

20 (Government's Exhibit 78 received.)

21 BY MR. LEE:

22 Q. Does that certificate demonstrate that the tablets
23 contained oxymorphone?

24 A. That's correct, sir.

25 MR. LEE: Government's Exhibit 79.

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1 BY MR. LEE:

2 Q. Government's Exhibit 79, is that another exhibit --
3 excuse me, certificate of analysis of some of the tablets that
4 were sent for confirmation testing?

5 A. Yes, sir, it is.

6 MR. LEE: Your Honor, I move for the admission of
7 Government's Exhibit 79.

8 THE COURT: It will be admitted.

9 (Government's Exhibit 79 received.)

10 BY MR. LEE:

11 Q. Does this demonstrate the presence of morphine in some of
12 the tablets --

13 A. Yes, sir, it does.

14 Q. -- that were tested?

15 MR. LEE: Government's Exhibit 80, please.

16 BY MR. LEE:

17 Q. Finally, Government's Exhibit 80, is that another
18 certificate of analysis for confirmation testing of some of
19 the tablets that were sent off?

20 A. Yes, sir, it is.

21 MR. LEE: Your Honor, I'd move for the admission of
22 Government's Exhibit 80.

23 THE COURT: 80 and 79 will also be admitted.

24 MR. LEE: Okay. Thank you, Judge.

25 (Government's Exhibit 80 received.)

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1 BY MR. LEE:

2 Q. And does this indicate the presence of hydromorphone --

3 A. That's correct.

4 Q. -- in the tablets that were tested?

5 A. Yes, sir.

6 Q. Specifically, as to some of the pills that were found --

7 MR. LEE: Ms. Vogt, if you could pull up
8 Government's Exhibit 62 please.

9 BY MR. LEE:

10 Q. -- is this one of the smaller -- or a close-up picture of
11 some of the pills that were set out after being separated into
12 like types?

13 A. Yes, sir.

14 MR. LEE: Your Honor, I move for the admission of
15 Government's Exhibit 62.

16 THE COURT: It will be admitted.

17 (Government's Exhibit 62 received.)

18 BY MR. LEE:

19 Q. Now, these tablets here (indicating) are oxymorphone; is
20 that correct?

21 A. Yes, sir.

22 Q. Okay. Now, specifically, what is different about the
23 pills that I've circled there in the lower right-hand corner,
24 the orange-red tablets, from the other pills that you found in
25 those bottles?

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1 A. I found them to be unique in that they were separated
2 into, I believe they were 10-count groupings and housed in
3 these small plastic cellophane bags, baggies.

4 Q. And based upon your training and experience as a DEA
5 agent, what is that indicative of?

6 A. It's generally indicative of distribution amounts.

7 Q. Packaged in such that it can be distributed to people in
8 smaller quantity?

9 A. Yes, sir. Easily trafficked or easily distributed.

10 Q. Okay.

11 MR. LEE: Thank you, Ms. Vogt.

12 BY MR. LEE:

13 Q. Agent Long, through your investigation, did you also
14 obtain bank records of Dr. Smithers and his businesses from
15 Bank of America?

16 A. I did, yes, sir.

17 MR. LEE: Those have been, I think, provided to the
18 Court already in electronic format. Your Honor, I'd move for
19 the introduction of Government's Exhibit 9, which is those
20 bank records?

21 THE COURT: It will be admitted.

22 (Government's Exhibit 9 received.)

23 MR. LEE: And Government's Exhibit 10.

24 THE COURT: It will be admitted.

25 (Government's Exhibit 10 received.)

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1 BY MR. LEE:

2 Q. Did you do an analysis of those bank records, Agent Long,
3 in order to provide a summary of the deposits into
4 Dr. Smithers's bank accounts between August of 2015 and June
5 of 2017? And I may be off on the dates.

6 A. I know that we --

7 Q. March of 2017, excuse me.

8 A. March of 2017. I know we did a breakdown of those
9 deposits between those months. And I believe it was the
10 operating months of Smithers Community Healthcare Clinic
11 between August of '15 through March of '17.

12 Q. And did you prepare a summary chart of those deposits?

13 A. I did, yes, sir.

14 MR. LEE: And, Ms. Clark, I don't want to show it to
15 the jury until I've had a chance to show it to the witness and
16 defense counsel.

17 If you could pull up Government's Exhibit 51,
18 Ms. Vogt.

19 Your Honor, my understanding is that Mr. Williams
20 doesn't have any objection to the introduction of Government's
21 Exhibit 51, which would be the summary chart of those
22 deposits.

23 THE COURT: Very well.

24 MR. LEE: And I'd move for its admission.

25 THE COURT: It will be admitted.

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(Government's Exhibit 51 received.)

2 MR. LEE: I'm going to put this on the easel here.

3 BY MR. LEE:

4 Q. Agent Long, if you would just explain to the jury what
5 that chart represents, please.

6 A. So from the records that we received from the bank, I did
7 a --

8 MR. LEE: Your Honor, I think some of the jurors on
9 this end may not be able to see. Do you mind if I move the
10 exhibit into the well of the courtroom?

11 THE COURT: Yes, sir, that will be fine.

12 THE WITNESS: -- from the bank statements we
13 received from Bank of America.

14 THE COURT: Mr. Lee, did you not have something to
15 show on the monitor about this?

16 MR. LEE: It's not loading, for whatever reason,
17 Judge. I'm not sure why.

18 THE COURT: All right.

19 MR. LEE: We'll rectify that after this.

20 MR. WILLIAMS: Your Honor, may I step over so I can
21 see what he's pointing to?

THE COURT: Yes, sir, you may.

23 And the defendant may also.

24 MR. WILLIAMS: Thank you, Your Honor.

25 MR. LEE: If Agent Long could come down to point out

1 on the exhibit, if that's acceptable.

2 THE COURT: All right. Agent Long, you need to
3 speak up when you're down there so the court reporter can hear
4 you.

5 THE WITNESS: Yes, sir. So from the bank statements
6 that we received from Bank of America, took the information
7 that was shown on the statements for these individual months,
8 from August 2015 through March 2017. The statements itself
9 showed the total deposits made into that account. And,
10 essentially, just put that information from those bank
11 statements into chart form. And that's what's represented
12 here.

13 BY MR. LEE:

14 Q. So each month is a monthly total of deposits into Joel
15 Smithers's DBA Priority Urgent Care account; correct?

16 A. That's correct. And this is representative of Bank of
17 America account number ending in 4440.

18 Q. So for the month of August 2015 there was only \$9,527?

19 A. That's correct, sir.

20 Q. And is it correct that was a month that the clinic in
21 Martinsville had just opened up, toward the end of the month?

22 A. If I remember correctly, the clinic in Martinsville
23 opened up about March 26, 2015.

24 Q. Then the very next month, deposits jumped from \$9,527 to
25 \$43,524.89?

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1 A. Yes, sir.

2 Q. And then, obviously, throughout the next number of months
3 those deposits are shown. And the highest amount deposited in
4 one month was January of 2017; is that correct?

5 A. Yes, sir.

6 Q. How much was deposited on that month?

7 A. \$71,392.84.

8 Q. Now March of 2017, you previously testified, was when the
9 search warrant was executed. What were the deposits in that
10 month?

11 A. In March of 2017, the statements showed total deposits of
12 \$18,075.

13 Q. All right. Thank you, Agent Long.

14 Agent Long, do you remember the total amount of the
15 deposits from all of those months that were indicated?

16 A. I don't remember the exact amount. I believe it was
17 around \$680,000, give or take.

18 Q. Okay. Agent Long, have you also prepared a summary chart
19 that indicates the patients' prescriptions that are charged in
20 the indictment, along with the pharmacies in which the
21 prescriptions issued to those patients were filled?

22 A. Yes, sir.

23 Q. Is that -- I believe that's Government's Exhibit 105.

24 MR. LEE: Take it down for the jury.

25 THE CLERK: It's blacked out until you tell me it's

1 admitted.

2 MR. LEE: It was on the screen.

3 THE CLERK: The gallery.

4 MR. LEE: All right. 105, please.

5 BY MR. LEE:

6 Q. Is this the first page of the document?

7 A. That appears to be correct, sir.

8 Q. Okay. And this summarizes all of the prescriptions and
9 distributions that are alleged in the indictment by patient,
10 the date, the drug prescribed, the pharmacy, et cetera?

11 A. Yes, sir.

12 MR. LEE: Your Honor, I move for the admission of
13 Government's Exhibit 105.

14 THE COURT: It will be admitted.

15 (Government's Exhibit 105 received.)

16 BY MR. LEE:

17 Q. And I won't go through every page, it's a 40-page
18 document. But if you could just explain to the jury what each
19 column represents, please.

20 A. So the first column at the far left, it's entitled
21 "Count," that is consistent with the count on the indictment.
22 So Count 3 of the indictment would be the first line on that
23 page. The second column is the initials of the patient, which
24 are represented on the indictment. The third column is the
25 name that corresponds with those initials which are on the

1 indictment. The approximate date column is the approximate
2 date the prescription was written. The drug prescribed is the
3 drug on the prescription. Quantity is the quantity of tablets
4 prescribed. The pharmacy name is the pharmacy where the
5 prescription was filled. And the city and state of the
6 pharmacy are the last two columns.

7 Q. Okay. So just running through the first count that's
8 listed, Count 3.

9 A. Yes, sir.

10 Q. In the indictment the person who received that
11 prescription is referenced only by the initial RB; is that
12 correct?

13 A. Yes, sir, that's correct on the indictment.

14 Q. That patient's full name is Robert Battaglia.

15 A. Yes, sir.

16 Q. And the approximate date would be September 3rd, 2015.

17 A. That's correct.

18 Q. Now, is that the date the prescription was issued or the
19 date the prescription was filled?

20 A. Yes, sir. It's the date the prescription was issued, the
21 date it was written.

22 Q. Okay. And the drug prescribed to Robert Battaglia on
23 that date that's alleged in Count 3 is MS Contin,
24 15 milligrams?

25 A. That's correct.

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1 Q. And the quantity references the number of pills that were
2 prescribed, which would be 60.

3 A. Yes, sir.

4 MR. LEE: Ms. Vogt, I didn't ask you to blow that
5 up. Would you mind blowing that up for us?

6 Thank you. I apologize.

7 MS. VOGT: What exhibit is that, I'm sorry?

8 MR. LEE: 105.

9 BY MR. LEE:

10 Q. So just to run through it again in case someone had
11 trouble -- difficulty reading it. Count 3, RB is the initials
12 in the indictment. Robert Battaglia is the patient.
13 September 3rd, 2015, is the date the prescription was written.
14 This prescription in Count 3 was for MS Contin for a quantity
15 of 60 pills. And the prescription was filled at the Olde
16 Virginia Pharmacy in Tazewell, Virginia; is that correct?

17 A. Yes, sir.

18 MR. LEE: All right. Thank you, Ms. Vogt.

19 BY MR. LEE:

20 Q. One thing, Agent Long, as the jury is potentially going
21 through the evidence, and they may have already seen, there
22 are certain prescriptions that are -- that have been -- when
23 entered into evidence they have either "void" or "copy" or
24 "copied" in the background of the prescription. Can you
25 explain what that means?

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1 A. Prescriptions are generally written on -- its protected
2 paper. It's secure paper. So there is a, sort of a watermark
3 background on those -- on that paper that when it gets copied,
4 potentially when it gets scanned, the watermark words will
5 show up, and it will show up as "void," or it may show up as
6 "copy," depending on the manufacturer of the paper, the
7 quality of the scanning equipment, or quality of the copying
8 equipment.

9 Q. Okay. As an example --

10 MR. LEE: Ms. Vogt, if you could pull up LK-469,
11 please.

12 THE CLERK: It's been previously admitted?

13 MR. LEE: Yes. 469.

14 BY MR. LEE:

15 Q. Showing on the screen, this is a prescription for Lora
16 Kicklighter; is that correct?

17 A. Yes, sir.

18 Q. Okay. And it's -- in the background you can see pretty
19 evidently there's a lot of "void"s, is that what you're
20 talking about?

21 A. Yes, sir, that's what I'm indicating. And the reason
22 that is done is to attempt to prevent someone from copying
23 prescriptions to present to further divert controlled
24 substances.

25 Q. So that was done in preparation of the exhibits and

1 seizing the documents for this investigation?

2 A. In processing those, yes, it would be copied or scanned,
3 and those watermarks do appear on some.

4 Q. Okay.

5 MR. LEE: Ms. Vogt, if you could pull up
6 Government's Exhibit -- I believe its 51, the map.

7 50.

8 BY MR. LEE:

9 Q. Agent Long, have you prepared a summary, have you been
10 involved or are you familiar with the preparation of a summary
11 map that's labelled Government's Exhibit 50?

12 A. I was involved in and aware of it, yes.

13 Q. Okay. What does the map note?

14 A. This map depicts certain locations that were involved in
15 this investigation, to include the location of Dr. Smithers's
16 practice, a sampling of the pharmacies that were used where
17 Dr. Smithers's prescriptions were filled, as well as notations
18 where patients indicated on Dr. Smithers's paperwork of their
19 residential addresses.

20 MR. LEE: Your Honor, I don't believe this has been
21 introduced before. Government's Exhibit 50. I'd move for its
22 introduction.

23 THE COURT: It will be admitted.

24 THE CLERK: It has been.

25 ///

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1 BY MR. LEE:

2 Q. So just to point out some of the things in the map, is it
3 fair to say that the blue pins are the cities listed by
4 patients that are charged in the indictment as their
5 residential cities?

6 A. That's my understanding.

7 Q. And the yellow pins are their actual address where they
8 were living; is that correct?

9 A. That would be correct.

10 Q. And then the red pins are locations of pharmacies, some
11 of the pharmacies that were used by the patients?

12 A. That's correct. There's also a red pin, as well as a
13 little house shape for Dr. Smithers's clinic.

14 Q. Okay. And Dr. Smithers's clinic is located where I've
15 circled down in Martinsville; is that correct?

16 A. Yes, sir.

17 Q. And then, for example, the Kentuckiana Pharmacy which is
18 on the Kentucky-Indiana border is marked all the way on the
19 far left-hand side of the screen.

20 A. Yes, sir.

21 Q. And then you can see, there are a number of clusters of
22 patients located both in West Virginia and Kentucky that I
23 circled; is that correct?

24 A. That's correct.

25 Q. The Mount Sterling collection of patients, was that

1 affiliated with a crew that's been discussed during this
2 trial?

3 A. Yes, sir, it is.

4 Q. Which crew was that?

5 A. Ricky and Rebecca Jessie.

6 Q. And then this little gathering of patients here on the
7 Kentucky/West Virginia border, was that -- looks like
8 Williamson, Belfry, Aflex, Canada, Williamson, was that
9 affiliated with another crew?

10 A. It was.

11 Q. Which crew was that?

12 A. Darryl Williams.

13 Q. And then all the way up here in New Albany, Ohio, is that
14 Shannon Kovaleski's address?

15 A. That's correct, sir.

16 Q. There's a patient listed here in the Marion area. Are
17 you familiar with who that was?

18 A. I believe that was Robert Battaglia.

19 Q. All right. Are you familiar with Robert Battaglia?

20 A. Yes, sir.

21 Q. And how are you familiar with him?

22 A. Mr. Battaglia was initially signed up with our office as
23 a confidential source, and we have met with him on a few
24 occasions.

25 Q. Okay. And did he provide information to the Drug

1 Enforcement Administration about Dr. Smithers?

2 A. Yes, sir, he did.

3 Q. And was that in approximately May of 2016?

4 A. Yes, sir.

5 Q. Did he actually obtain prescriptions by mail from

6 Dr. Smithers during that timeframe?

7 A. They were shipped, whether it's postal or FedEx.

8 Q. I apologize. Shipped by some --

9 A. Courier service --

10 Q. Courier service, delivery service.

11 A. Yes, sir.

12 Q. Was that at the direction of DEA?

13 A. It was in cooperation with the DEA, yes, sir.

14 Q. Do you remember when he received those prescriptions?

15 A. I believe it was on the -- on or about May 18th of 2016.

16 Q. And were those filled by Robert Battaglia at the

17 direction of DEA?

18 A. They were. However, we had accompanied Mr. Battaglia to

19 the pharmacy to have them filled.

20 Q. Do you remember what date that occurred on?

21 A. It was either the same date, the 18th, or maybe a day or

22 two later. I don't remember the exact day. But it was within

23 a couple days of May -- of May 18.

24 Q. Okay. And are you familiar with an individual named

25 Robert Bowen?

1 A. No, sir.

2 Q. Excuse me, Richard Bowen?

3 A. I don't know Richard Bowen. I'm familiar with the name.

4 Q. Are you familiar with he was a patient of Dr. Smithers?

5 A. Yes, sir.

6 Q. Was he also an associate of Mr. Battaglia?

7 A. It seemed to be that way, yes, sir.

8 Q. Were you able to obtain, through the course of the search

9 warrants that were executed, and I believe the downloads of

10 the phones that were conducted of Dr. Smithers's phone, text

11 messages between Richard Bowen and Dr. Smithers?

12 A. Yes, sir, I am familiar with it.

13 Q. And have those been downloaded and provided through the

14 discovery process?

15 A. Yes, sir.

16 MR. LEE: Your Honor, at this time I'd move for the

17 introduction of Government's Exhibit 104, which is excerpts of

18 the text messages between Mr. Bowen and Dr. Smithers.

19 THE COURT: All right. Before we get into that, I

20 take it you have more questions. Let's take a mid-morning

21 recess at this time.

22 MR. LEE: Yes, Judge.

23 THE COURT: Ladies and gentlemen, we're going to

24 take a recess at this time. If you'll follow the bailiff out.

25 THE WITNESS: Your Honor, may I move this easel out

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1 of the way?

2 THE COURT: Yes, please.

3 (Proceedings held in the absence of the jury.)

4 THE COURT: All right. If there's nothing further,
5 we'll take a recess at this time.

6 (Proceedings suspended at 10:32 a.m. and resumed at 11:13
7 p.m.)

8 THE COURT: Are we ready to proceed?

9 MR. LEE: Yes, Judge.

10 Just one housekeeping matter. I don't know if that
11 last exhibit was actually moved or not. Government's
12 Exhibit 104.

13 THE COURT: It will be admitted.

14 (Government's Exhibit 104 received.)

15 THE COURT: I'll tell the jury that when they come
16 in also.

17 All right. We'll have the jury in.

18 (Proceedings held in the presence of the jury.)

19 THE COURT: Ladies and gentlemen, we're ready to go
20 again. And I will admit exhibit -- Government's Exhibit 104.

21 MR. LEE: Thank you, Judge.

22 BY MR. LEE:

23 Q. Agent Long, just to go back a little bit before the
24 break. We were talking about a patient of Dr. Smithers named
25 Robert Battaglia; is that correct?

1 A. Yes, sir.

2 Q. And we had just started discussing how on May the 18th of
3 2016 he had cooperated with the DEA by -- or around that date,
4 had been cooperating with the DEA to receive prescriptions via
5 FedEx, UPS, or mail, some delivery service, from Dr. Smithers
6 without actually going to a visit; is that correct?

7 A. Yes, sir, that's correct.

8 Q. Can you tell the members of the jury why he was
9 cooperating, if you know?

10 A. If memory recalls, Mr. Battaglia had been arrested by
11 city police, I believe it was subsequent to having received a
12 package through UPS, or at least had been questioned about a
13 package containing controlled substances he received through
14 UPS.

15 Q. So he had some sort of legal trouble or had been
16 questioned by the authorities about something related to
17 controlled substances.

18 A. That's what I recall, yes, sir.

19 Q. And was the DEA involved in those underlying matters?

20 A. No, sir.

21 Q. Okay. So, fair to say, the only person who would know
22 about any connection to the DEA would be him or somebody he
23 told; is that correct?

24 A. That's correct.

25 The -- when the incidents happened at the UPS, our

1 group has a task force officer from the Bristol Police
2 Department on our task force who was notified of this. But as
3 far as it being a DEA activity, those activities were not DEA
4 sponsored or run at that time.

5 Q. Okay. All right. So just to make it clear, DEA knew
6 about his issue with the package?

7 A. Yes.

8 Q. But was not involved in the arrest, if it happened, or
9 any questioning, or the bringing of charges?

10 A. That's correct. It was only after that that
11 Mr. Battaglia was signed up as a confidential source, after
12 that incident, to my recollection. And then the DEA -- he
13 cooperated then with DEA in obtaining these prescriptions and
14 then the ultimate filling of those prescriptions.

15 Q. Okay. And I guess maybe to put it in a different way,
16 his cooperation with the DEA was not a matter of public record
17 or known to the general public.

18 A. No.

19 Q. Okay. All right. So we had been talking about
20 Mr. Battaglia, and I think you also mentioned that there was
21 another patient named Richard Bowen who was from the same
22 general area that Mr. Battaglia lived in.

23 A. That's correct, yes, sir.

24 Q. And you believe there was some association between the
25 two as far as acquaintanceship or they knew each other?

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1 A. Unknown at the time, but now known, yes.

2 Q. Okay. And we had just moved to introduce -- or we had
3 talked about how on the 18th of May, Mr. Battaglia had
4 received mail -- some sort of delivered prescriptions from
5 Dr. Smithers; is that correct?

6 A. On or about that day, yes, sir.

7 Q. And then on or about that day or the next day, within a
8 couple days of that, May the 18th, Mr. Battaglia and yourself,
9 and agent -- or Detective Simpson went and filled those
10 prescriptions.

11 A. That is correct.

12 Q. Okay. Directing your attention to Government's
13 Exhibit 104 --

14 MR. LEE: Ms. Vogt, if you could pull that up.

15 THE CLERK: 104?

16 MR. LEE: 104, correct. And this can be shown to
17 the jury.

18 THE CLERK: Okay. You should see it.

19 MR. LEE: Okay. If you could blow up the lower
20 half, please.

21 BY MR. LEE:

22 Q. And, Agent Long, just so the jury's aware of how these
23 particular text messages are set up, the first column, that's
24 just a number noting the number of message that it is; is that
25 correct?

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1 A. My understanding, yes, sir.

2 Q. Okay. The next column notates what type of a text

3 message it might be; is that correct?

4 A. That's correct.

5 Q. This third column indicates whether the message is

6 outgoing from Dr. Smithers's phone to somebody else, or

7 incoming, being sent from someone else to Dr. Smithers; is

8 that correct?

9 A. That is correct.

10 Q. The next two columns are blank. The sixth column notates

11 the time that the message was sent or received; is that

12 correct?

13 A. Yes, sir, that's what it indicates.

14 Q. Okay. And then the next column indicates either -- who

15 the text message is from and who it is to; is that correct?

16 A. Yes, sir.

17 Q. And in this text message showing it references, "From:

18 SCH cell," are you familiar with what that notation is?

19 A. Yes, sir. It was our understanding that "SCH cell" is a

20 phone that Dr. Smithers had.

21 Q. Okay. And then Richard Bowen is the other party?

22 A. That is correct.

23 Q. And then the final column, if it has anything in it,

24 that's the content of the message; is that correct?

25 A. That's my understanding, yes, sir.

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1 Q. So these messages that we're going to be looking at
2 initially, it appears they were all sent on May the 20th of
3 2016; is that correct?

4 A. That's what it indicates, yes.

5 Q. Within two days of -- or around the same time frame that
6 Mr. Battaglia is cooperating with you to receive
7 prescriptions.

8 A. Yes, sir.

9 Q. And the first, just to go through the messages. And I
10 will read the ones from Mr. Bowen, if you'd read the ones from
11 Dr. Smithers. The first two messages are from Dr. Smithers;
12 is that correct?

13 A. That's what it indicates, yes, sir.

14 Q. And what do they say?

15 A. "When is a good time to call you?"

16 "This is Dr. Smithers."

17 Q. Richard Bowen send, "I can't talk at the moment. I'll
18 call you in two hours."

19 A. "K."

20 MR. LEE: The next page.

21 BY MR. LEE:

22 Q. Then what is the next message that Dr. Smithers sends?

23 A. He sends, "Can you give me any idea of what this is
24 concerning?"

25 Q. And Richard Bowen responds "DEA."

1 A. "K."

2 Q. And then Dr. Smithers responds?

3 A. He says "K."

4 "Call when you can."

5 Q. Then Dr. Smithers sends another message, what does he
6 say?

7 A. "It's been over two hours, sir... Can you please either
8 give me more context via a text message or call me, please.
9 Thank you."

10 Q. Then the next message from Richard Bowen is, "The person
11 who is with me is your problem. I can't talk in front of him
12 an you want -- "and you won't believe who it is but trust me
13 I'm looking out for you an your family." Is that correct?

14 A. That's the way it reads, yes, sir.

15 Q. Then Mr. Bowen continues on to say, "You candy tell a
16 soul about what I'm going to tell you."

17 Then he says, "can't", presumably correcting the
18 message typo.

19 What does Dr. Smithers tell you?

20 A. He says, "Interesting."

21 "I don't tell anyone about informants and never
22 will."

23 Q. Mr. Bowen responds with, "You owe me lol."

24 What does Dr. Smithers respond with?

25 A. "That is yet to be determined. When is the last time we

1 saw you at the office?"

2 Q. Then Dr. Smithers sends two more messages. What do they
3 say?

4 A. He sends, "I lost you."

5 Then second message, "I'll have the kids home in 10.
6 Please call me back, sir."

7 Q. Okay.

8 MR. LEE: If you could go to the next page, which I
9 believe is page 5 of the Government's Exhibit 104.

10 I'm sorry, Ms. Vogt, can you go back to page 3 of
11 the exhibit.

12 Okay. Could you go to the next page.

13 Not that section, please, the next one. Next two
14 sections, please.

15 Thank you.

16 BY MR. LEE:

17 Q. What is the message from Dr. Smithers?

18 A. It says, "You da boss."

19 And follows up with, "Thx for looking out for us...
20 It hasn't been made known yet but we also have a little one on
21 the way, so I really appreciate any information to help us
22 stay on the straight and narrow. Thank you, sir."

23 Q. Then Richard Bowen says, "Look I like y'all an i cant
24 stand a dam snitch it cost me three years of my life an i was
25 just trying to help someone."

1 "I want let him bring you down."

2 Then further says, "I would send him a letter an
3 tell him the clinic called you an told you make sure he signs
4 for the letter if I was you. I wouldn't even talk to him
5 again." Is that correct?

6 A. That's the way it reads, yes, sir.

7 MR. LEE: Ms. Vogt, if you could bring up what has
8 already been admitted in Government's Exhibit RB-2, page 32 of
9 that exhibit.

10 BY MR. LEE:

11 Q. Showing you the patient file of Robert Battaglia, page 32
12 of that file. Is this a letter that appears to be sent from
13 Dr. Smithers?

14 A. Yes, sir, it does.

15 Q. Who is it addressed to?

16 A. Mr. Robert Battaglia.

17 Q. And, in summary, is that letter discharging or dismissing
18 Mr. Battaglia from the practice?

19 A. The essence of this letter is that he will no longer be
20 seen as a patient.

21 Q. What is the date of that letter?

22 A. June 1st, 2016.

23 Q. So approximately 11 days after Mr. Bowen and
24 Dr. Smithers's conversation.

25 A. That's correct.

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1 MR. LEE: All right. Thank you.

2 BY MR. LEE:

3 Q. Couple other somewhat housekeeping matters I wanted to
4 address before I forget.

5 What is your -- just so the jury is not confused if
6 they're looking at documents in the case. What is your full
7 legal name?

8 A. Michael Patrick Long.

9 Q. So do you sign it Michael Patrick Long?

10 A. Not always. It will be Michael P. or M. Patrick Long.

11 Q. Okay. All right. And one other question I had about the
12 chart, a couple questions. The chart that you produced ends
13 in March of 2017; is that correct?

14 A. Yes, sir, that's correct.

15 Q. And the search warrant was on March the 7th of 2017.

16 A. Yes, sir, that's correct.

17 Q. Okay. And the practice continued to stay open after
18 that; is that right?

19 A. It did, yes.

20 Q. But you chose just to look at deposits up until the date
21 of the search warrant.

22 A. Those were the records that we had at the time, I
23 believe.

24 Q. Okay.

25 MR. LEE: All right. If I could have the ELMO on,

1 ma'am.

2 BY MR. LEE:

3 Q. I'm going to show you what has been marked and has
4 already been admitted as Government's Exhibit 49. This is
5 a -- do you remember what this is?

6 A. This was a handwritten note that was found during the
7 search warrant of Mr. -- excuse me, Dr. Smithers's clinic.

8 Q. All right. And this was found -- there are actually two
9 searches that occurred at Dr. Smithers's practice, one via the
10 search warrant in March of 2017. When was there a second
11 search done?

12 A. There was a second search warrant executed the early part
13 of November of 2017.

14 Q. Okay. Why was another search warrant executed in
15 November?

16 A. The landlord represents for the landlord of the practice,
17 of the building, had indicated -- had contacted first
18 Martinsville Police Department who referred them to our office
19 in Roanoke and expressed to our agents there that the rent had
20 not been paid for a couple months. And, as a result, they
21 were terminating the lease. And in doing so, they had gone to
22 the clinic and found some various papers, documents, reports
23 that appeared to be health related. And they contacted our
24 office to let us know that that information was there. We
25 secured a second search warrant to retrieve those documents

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1 the landlord had collected.

2 Q. Okay. So this first note, Government's Exhibit 49, it
3 says, "For suspected wires." Then in quotes, "'without
4 verification of your issues, cannot help you.'" That was
5 seized on the March 7, search warrant; correct?

6 A. Yes, it was, sir.

7 Q. If you could, briefly explain, in your line of work as a
8 DEA agent, what's it mean, a wire?

9 A. A wire is --

10 MR. WILLIAMS: Your Honor, if I could, I would
11 object at this point in time, certainly as to his
12 qualifications to be able to tell that.

13 MR. LEE: Your Honor, I think the basis of his own
14 personal experience, the use of the term "wire," I think he
15 can explain what that is.

16 THE COURT: Yes, sir. I believe that it's been
17 sufficiently shown that the witness has a sufficient
18 experience in law enforcement to define that term. I'll
19 overrule the objection.

20 BY MR. LEE:

21 Q. What does the term "wire" as it would be used in this
22 sort of context mean to you?

23 A. When we conduct undercover operations, either using an
24 undercover agent, law enforcement agent, or a confidential
25 source, or a cooperating individual, there are times when we

1 may want to record interactions that that undercover person
2 has. And we do that through various covert means, or covert
3 devices, and they're commonly referred to as wires. I think
4 that's maybe sort of a throw back to when things were actually
5 wired. They had wires to microphones to recording devices and
6 that's just a generic term for a covert recording device.

7 Q. Now showing you Government's Exhibit 87, which has
8 already been introduced, this is another note; is that
9 correct?

10 A. Yes, sir.

11 Q. Okay. Do you know when this note was seized?

12 A. This was part of the documents that our agents had
13 retrieved in the November -- excuse me, the November search
14 warrant.

15 Q. What does this note say?

16 A. "Is Darryl Williams wearing a wire?"

17 Q. Now showing you Government's Exhibit 88, when was this
18 note seized?

19 A. This was another note that was seized during the
20 November 2017 search warrant.

21 Q. Okay. And it mentions "DEA."

22 A. Yes, sir.

23 Q. And has what appear to be some numbers and letters; is
24 that correct?

25 A. It does, yes, sir.

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1 Q. Okay. Do any of those numbers and letters mean anything
2 to you?

3 A. By looking at the note and the description of a late
4 model Ford, it sort of infers a partial tag number, license
5 plate numbers. And the questioning is -- the way I interpret
6 this note, is this potentially DEA vehicles, drug diverters,
7 or sponsors?

8 Q. All right. At this time I want to go through some
9 additional text messages with you. These would be text
10 messages downloaded from Dr. Smithers's phone involving a
11 Clayton Colegrove. Do you know who Clayton Colegrove was?

12 A. Yes, sir.

13 Q. And who is he?

14 A. He was a patient of Dr. Smithers.

15 MR. LEE: Your Honor, at this time I'd move for the
16 introduction of Government's Exhibit CC-1000.

17 THE COURT: It will be admitted.

18 (Government's Exhibit CC-1000 received.)

19 MR. LEE: Ms. Vogt, if you could pull up
20 Government's -- or page 1 of that document, please.

21 And, Ms. Vogt, if you would pull up just that
22 portion, please (indicating).

23 Actually, could you go -- I'm sorry, go down to
24 there. Yeah, that's fine. Thank you.

25 ///

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1 BY MR. LEE:

2 Q. So these are messages between, it appears, Clayton
3 Colegrove and SCH cell; is that correct?

4 A. That's what it appears, yes, sir.

5 Q. In these downloads of text messages, is it common that
6 the succession of dates are reversed? Normally it would go
7 earliest date in time going down, but sometimes it goes, in
8 essence, up the page?

9 A. That's correct. There's multiple sections of the reports
10 when these phones are downloaded. And, for whatever reason,
11 and I don't know all the reasons behind the way they do these
12 or how the data from the phone gets displayed in the report,
13 but for whatever reason some of the sections of this report
14 are listed in reverse chronological order, while other
15 sections are in chronological order.

16 Q. Okay. I guess we'll just start here. The first message
17 there is from the SCH cell; is that correct?

18 A. Yes, sir.

19 Q. Okay. And if you would read the SCH cell side, and I'll
20 read the Clayton Colegrove side.

21 A. Yes, sir.

22 Q. How does the conversation start?

23 A. "What is your mailing address, sir?"

24 Q. Mr. Colegrove responds with his address. And then in
25 "dingess wv" and states "thats where I live with my uncle. My

1 mailing address is" -- then provides the box number in
2 "dingess wv." And then says, "But send it to box 2410."

3 A. Dr. Smithers replies, "Will do."

4 "Thank you. Sorry for bothering you."

5 Q. Then it appears those messages were sent on August
6 the 6th of 2016; is that correct?

7 A. Yes, sir.

8 Q. And the message at the top there is August the 9th of --

9 A. Yes, sir.

10 Q. And Mr. Colegrove sends a message to Dr. Smithers
11 stating, "Good morning doc. this is clayton colegrove is
12 there a tracking # that i need?" Correct?

13 A. That's correct.

14 MR. LEE: Ms. Vogt, I'm going to ask you to now pull
15 up -- well, first, Government's Exhibit RiJ-1000.

16 BY MR. LEE:

17 Q. Are those text messages between Ricky Jessie and
18 Dr. Smithers downloaded from Mr. Smithers's phone?

19 A. That's correct.

20 MR. LEE: Your Honor, I move for the introduction of
21 Government's Exhibit RiJ-1000.

22 THE COURT: It will be admitted.

23 (Government's Exhibit RiJ-10000 received.)

24 MR. LEE: Ms. Vogt, if you could direct us to
25 page 12. And we're going to go through that whole page there.

1 So if you want to blow up the top, that would be great.

2 BY MR. LEE:

3 Q. Now the format of this part of the download is a little
4 bit different; is that correct? from what we've been looking
5 at?

6 A. Yes, it is.

7 Q. Okay. And in this format, it starts off with the date
8 and time the message was sent; is that correct?

9 A. That is correct.

10 Q. Then there's a phone number from where the message was
11 sent from.

12 A. Yes.

13 Q. And then a notation as to the name of the person that was
14 sent to; is that correct?

15 A. That's correct.

16 Q. Just so the jury is aware, the names, those are populated
17 from the contacts within the phone itself?

18 A. That is my understanding, yes.

19 Q. Okay. So on August the 23rd, 2015, Rick and -- a phone
20 number that comes back to Rick and Becky Jessie sends a
21 message that says, "Hey doc we didn't know if you were going
22 to no open tomorrow if you are we have to leave around 2:"

"If you don't care just let me know thanks."

25 A. He does respond, "Won't be open tomorrow."

1 "Sorry couldn't answer, crying baby."

2 Q. Then the from Rick and Becky Jessie says, "What about
3 Tuesday?"

4 "Reason why I'm asking it about a 16 hour there and
5 back 8 hours up and 8 hours back we will have to get a hotel."

6 A. That's correct.

7 Q. What does Dr. Smithers respond with?

8 A. He replies, "Working on it."

9 Then, "I'll let you know."

10 Q. Then Rick and Becky Jessie state, "Thanks we was going to
11 come up early am get hotel room make it easier."

12 Then, "Hey call me when you get time need to ask you
13 something."

14 Then Rick and Becky Jessie continue to text and
15 state, "I was going to call you but I hate to bother you so
16 much wanted to see if Billie j Lindsay for Thursday earlier
17 the better sorry for bothering you so much if you don't care
18 could you let me know if that's ok."

19 What does Dr. Smithers say?

20 A. Replies, "Let me check the schedule before i give you a
21 time."

22 MR. LEE: Just go to the next page.

23 BY MR. LEE:

24 Q. Dr. Smithers.

25 Now this message is on the next day, August the

1 24th; is that correct?

2 A. Appears that way.

3 Q. What does Dr. Smithers say?

4 A. "I'll text you later this evening."

5 Q. The Jessie phone responds with, "Ok thanks."

6 A. Dr. Smithers says, "Thank you!!"

7 Q. Then the Jessie phone responds with, on the next day,
8 August the 25th, "James m long jr This is the guy that needs
9 to come Thursday with Billie Jean. Could you let me know you
10 got this text."

11 A. Dr. Smithers says, "Got it."

12 Q. And then what does Dr. Smithers state?

13 A. "Billy is at 10AM and James will be at 1045 AM."

14 Next message on Thursday, then follows up -- well,
15 this is a couple days later, according to the date stamp.
16 "What's up?"

17 Q. The Jessie phone responds with, "Call me if you can."

18 A. Dr. Smithers, "At boy's football game."

19 "I just listened to the voice mail. Text me his
20 name and number."

21 Q. Then?

22 A. Do you want me to continue?

23 Q. Please.

24 A. Dr. Smithers says, "We can see him on Monday no problem."

25 Q. Then the Jessie phone responds with, "Call me after the

1 game let me know who wins I got a guy for Monday one new guy
2 and one return see how many opening you have for Monday."

3 A. Dr. Smithers, "We can see 'em both."

4 Q. And the Jessies' phone responds with, "Ok might have one
5 or two more."

6 MR. LEE: The next page, please.

7 BY MR. LEE:

8 Q. Jessie phone sends on August the 29th of 2015, "Hey doc
9 Amanda miles will be later in the week so Debra brown will be
10 Monday at 3:00 if that's ok."

11 A. Dr. Smithers, "Sounds good to me."

12 Following up, "Is Ms. Brown a new patient?"

13 Q. The Jessie phone responds, "No, she's a return and Janet
14 grey craft is Monday."

15 A. Dr. Smithers, "K".

16 Q. Jessie phone, "She's a return patient too."

17 A. Dr. Smithers, "She's at 1430."

18 Q. Is that military time notation?

19 A. My understanding, yes.

20 Q. Jessie phone responds with, "Yes."

21 Then the next day, August the 30th, "Hey doc need
22 Sharon Mullins Tuesday she's a return patient."

23 Then, "Hey doc I got two for Tuesday 1 is Sharon
24 Mullins and 2 is David woods just need appt times."

25 A. Dr. Smithers, "Sharon is at noon and David is at 1pm."

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1 Dr. Smithers, "Are they both new?"

2 Q. Jessie responses with, "Ok both are returns."

3 MR. LEE: To the next page, Ms. Vogt, at the bottom.

4 BY MR. LEE:

5 Q. Jessie phone sends, "Here are the names Amanda miles and
6 aundra white -- oh, "Here are the names Amanda miles and
7 aundra white and might have a third person for tuesday?"

8 A. Dr. Smithers, "R y'all bringin a third person?"

9 "Are these all new?"

10 Q. And these text messages are on September 5th and 7th; is
11 that correct?

12 A. That's correct.

13 Follows up with, "A. Miles at 1500 and A. White at
14 1530."

15 Q. The Mr. Jessie -- or the Jessie phone responds with,
16 "They are returns and no on the third person."

17 A. Dr. Smithers, "K."

18 Q. Then the Jessie phone, "Hey doc I got two for Thursday
19 want to know if I can get them in as early as possible thank
20 you."

21 A. Dr. Smithers, "K."

22 MR. LEE: Going to the next page at the bottom half
23 starting right there, please (indicating).

24 BY MR. LEE:

25 Q. This is September the 8th. The Jessie phone, "Hey can we

1 move Amanda miles and aundra white to tomorrow the earlier the
2 better we was on the way down and rick got sick on me just
3 want to see if it ok to put them tomorrow and rick and dean
4 Legget Thursday early sorry for the unconvinced you."

5 A. Dr. Smithers, "No worries! So sorry to hear Rick got
6 sick."

7 Q. Then the Jessie phone, "Hey doc sorry to bother you but
8 what time is rick and dean leggets appt on Thursday?"

9 A. "Are they new?"

10 "2 & 2:30pm."

11 Q. Then, "Hey doc it's rick and dean Legget you have
12 anything earlier?"

13 A. Dr. Smithers, "Are they new?"

14 MR. LEE: I think the bottom, just to finish up that
15 string, please.

16 BY MR. LEE:

17 Q. And the response is?

18 A. Dr. Smithers continued, "No, nothing earlier on Thursday,
19 sorry."

20 MR. LEE: Can we go to page 18.

21 And then just that portion right there, please.

22 (Indicating).

23 BY MR. LEE:

24 Q. I'm going to start, message from the Jessie phone on
25 September the 11th of 2015. "Hey call me asap I've got to

1 tell you something if you don't care."

2 A. Dr. Smithers, "With a pt. what's up?"

3 Q. The Jessie phone responds with, "Got pulled over last
4 night."

5 MR. LEE: If you could go to page 20, please.

6 And we'll start at the top of the page and do most
7 of the page.

8 BY MR. LEE:

9 Q. The Jessie phone on September the 19th. "For the first
10 of the week."

11 A. Dr. Smithers, "0930 on Monday."

12 Q. The Jessie phone responds with, "I'll try and get that
13 filled."

14 A. Dr. Smithers, "Then booked solid til 1330 on Wednesday."

15 Following up with, "K."

16 Q. Jessie phone responds with, "Ok I will see what I can do
17 for Monday and Wednesday and Becky and Deanna on Thursday."

18 A. Dr. Smithers, "Mrs. Becky and Deanna are 1030 and 1100 on
19 Thursday 9/24."

20 Q. Jessie phone responds with, "Good."

21 A. Dr. Smithers, "I have two before them that morning."

22 Q. Jessie phone responds with, "Will try fill Monday and
23 Wednesday for you."

24 A. Dr. Smithers, "After them there is no one else booked for
25 Thursday and only one patient booked for Friday. I'm seeing

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1 patients on Friday this week because we will be out of town on
2 Tuesday for Angel's sister's wedding."

3 Q. The Jessie phone responds with, "Ok we will do what we
4 can to cover those spots."

5 A. Dr. Smithers, "Outstanding."

6 Dr. Smithers, "Got my guy Wendell Wilson starting
7 Tuesday on auditing, drug tests and admin stuff."

8 Q. Jessie phone responds with, "Good deal."

9 A. Dr. Smithers, "Will be getting more efficient and
10 effective."

11 MR. LEE: Page 21, please. The next page. And it's
12 just going to be very small portion there. The top of my
13 yellow (indicating).

14 BY MR. LEE:

15 Q. Starting there with Rick and Jessie phone. Rick and
16 Becky Jessie phone. "Hey doc I might have one for Wednesday
17 she will be a new patient if that's okay."

18 "She's a good one."

19 A. Dr. Smithers replies, "Excellent."

20 And then, "Give me a name and I'll give you a time."

21 Q. And the Jessie phone responds with, "her name is Angela
22 while I York, can she be on Wednesday early?"

23 "Hey doc did you give me a time for Angela York for
24 Wednesday if we can get an early appt that would be great I
25 couldn't remember if you did I'm sorry to bother you on

1 Sunday."

2 A. Dr. Smithers, "No worries, sir."

3 "Are you bringing her or is she alone."

4 Q. "We will be bringing her are we talking about Angela York
5 for Wednesday I forgot what time she's a new patient."

6 MR. LEE: Page 50, please.

7 BY MR. LEE:

8 Q. Now, Agent Long, sometimes are the messages in the
9 download truncated and jumbled a little bit?

10 A. They are.

11 Q. If you look at what's on the screen from these messages
12 sent from the Ricky -- Rick and Becky Jessie phone, is that
13 what it appears happens?

14 A. It does. It would be a separate section of the report
15 than what we were just reading from.

16 Q. Okay. Does it appear that you would start here, read
17 down to there, then come up to there, and then up to there?

18 A. I see what you're asking. Yes, it does.

19 Q. Okay. So the message from the Jessie phone is, "Hey I
20 need to ask you something deanna's son has to have surgery and
21 she can't make it down is there anyway you could send her
22 prescription to her at her address she goes for her blood work
23 and mri next week and as soon as she gets it she will send it
24 to you please the reason its taking so long is that they are
25 packed and she gets 60 -- 50 oxyco -- 60, 15 oxycodones and 60

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1 30 morphine. And her address is" -- I'm not going to say what
2 the address is -- "in Mount Sterling, Kentucky, and you can
3 send it by regular mail." Is that the message?

4 A. That's what it reads, yes.

5 Q. That message was sent November the 30th; is that correct?

6 A. Yes, sir, 2015.

7 MR. LEE: Go to page 52, please.

8 If you would start at this bottom section, Ms. Vogt.

9 BY MR. LEE:

10 Q. The first -- again, they're somewhat truncated. It looks
11 like this message, and then this message, this message, and
12 then that message.

13 A. That's correct.

14 Q. So basically working from the bottom up; is that correct?

15 A. Yes, sir, as the time stamps show, yes.

16 Q. And the first message is from the Dr. Smithers -- from
17 the Jessie phone which says, "Hey doc where are you we been
18 here at the office waiting on you just checking to see if you
19 are ok."

20 A. Dr. Smithers replies, "We are closed today for Veterans
21 Day."

22 And then, "I'm very sorry. I thought y'all were
23 coming on Thursday."

24 Followed up with, "Frankly, I'm having difficulty
25 keeping up with everything. Not just y'all but all the

1 business stuff and issues with other pt's, as well. From now
2 on, please text Angel (she actually had this idea a few days
3 ago and I should have told you then so this situation could
4 have been avoided). Her number is" -- and then provides a
5 telephone number.

6 MR. LEE: If you could close that out.

7 BY MR. LEE:

8 Q. Angel, do you know who Angel is?

9 A. My understanding is Angel Smithers is Dr. Smithers's
10 wife.

11 Q. And, to your knowledge, does she have any sort of medical
12 training? Medical background? Anything like that?

13 A. I believe she has some nursing training, but I don't know
14 to what level.

15 MR. LEE: Ms. Vogt, if you could then go to the next
16 section, please.

17 BY MR. LEE:

18 Q. And, again, these appear to go from the bottom up; is
19 that correct?

20 A. Yes, sir, that's correct.

21 Q. And the first message is from the Jessie phone, which
22 lists an address in Mount Sterling, Kentucky. And then the --
23 it reads, "Are they going to be over nighted do we can make
24 sure we are here."

25 A. The reply from Dr. Smithers, "They will be priority mail

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1 most likely. I will text you the tracking number."

2 MR. LEE: Okay. And then that next section, please.

3 BY MR. LEE:

4 Q. Again, reading from the bottom up. From the Jessie
5 phone, "Is there anyway you could overnight them rick will be
6 out this weekend if you could we'd appreciate it so much."

7 A. Reply is, "Planning on it, yes."

8 Then, "I'll text tracking info as soon as I have
9 it."

10 Q. Then the Jessie phone, "Ok thanks."

11 MR. LEE: Now to page 68, please.

12 BY MR. LEE:

13 Q. This is a message from the Jessie phone to Dr. Smithers;
14 is that correct?

15 A. That's what it appears, yes.

16 Q. Would you mind reading that for the jury.

17 A. "Hey doc it's Becky Jessie and Rick, we are sorry we
18 haven't got our money yet, they say we will receive it around
19 the 17th thru the 20th, we hope we will send the 420 plus 600
20 more, we will send you Rick's blood work when we get it.
21 Rick's head don't look good. It has three holes opened up,
22 bad news is that's the way it started that made the big hole,
23 good news is the skin and flesh is good and probably going to
24 have another surgery, we will know something towards the end
25 of the month, they don't want Rick out much with his head

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1 opened, we still haven't got a car yet, we can't wait to get
2 that money so we can pay you and the housing authority, if you
3 don't care, and we really hate to ask if you could send our
4 scripts this will be the last time, next month hopefully we
5 can get down there, if you would we would really appreciate
6 it, we thought it would already be here, we are sorry, we
7 didn't mean for it to take this long the housing authority put
8 us in a house down from Deanna for now, the VA and housing
9 authority are helping us again, we are sorry, if you don't
10 care to send them one more time, we appreciate it and
11 everything you have done to help us thanks doc."

12 Q. What's the date on that message?

13 A. March 4th, 2016.

14 MR. LEE: Okay. If we could go to page 85, please.
15 And we'll start in that top section, please.

16 BY MR. LEE:

17 Q. First of all, what are the dates on these text messages?

18 A. Both are dated April 22nd, 2016.

19 Q. And does it appear that if you read the message it
20 logically looks like you start in the bottom box and then read
21 the top one?

22 A. It does seem to continue to the top box.

23 Q. The Jessie phone says, "Hey doc I'm sorry to bother you
24 but Rick wanted me to text you and let you know we are going
25 to try and get down there next week are there any way you

1 could send Rick scripts he's out he was in the hospital
2 thanks."

3 And then if you look at the time stamps, does it
4 appear that the messages then in this next section go from the
5 top down?

6 A. They do appear to be chronological, yes.

7 Q. Okay. And these are all dated on April the 22nd also;
8 correct?

9 A. Yes, they are.

10 Q. And if you want to read from Dr. Smithers's phone.

11 A. Okay. Dr. Smithers, "Oh, hey I need Rick's date of
12 birth."

13 Q. Then from the Jessie phone they give the date of birth,
14 which I'm not going to read out loud.

15 A. Dr. Smithers, "Thx."

16 Q. And the Jessie phone says, "He wanted to know if you
17 could FedEx overnight."

18 A. Dr. Smithers, "I can."

19 Following up with, "For \$70.50. We can just add it
20 to the bill though."

21 Q. The Jessie phone says, "He said he would bring it when we
22 come Thursday."

23 MR. LEE: That's okay, Ms. Vogt, you don't need
24 to...

25 Finally -- I believe that's all the messages I have

1 in that bunch.

2 Judge, we have another large set of messages to go
3 through. I don't know if the Court wants to take its break.

4 THE COURT: Let's go a little longer today, if you
5 can.

6 MR. LEE: Okay. The next group of messages are
7 involving downloads from Dr. Smithers's phone involving Darryl
8 Williams, and they are DWi-1000. I'd move for the admission
9 of those messages.

10 THE COURT: It will be admitted.

11 MR. LEE: Thank you.

12 (Government's Exhibit DWi-1000 received.)

13 MR. LEE: Ms. Vogt, if you could pull up page 13,
14 please.

15 And we're going to go from here all the way to there
16 (indicating).

17 BY MR. LEE:

18 Q. So these are set up and -- whoever is sending the message
19 is noted right above the message; is that correct?

20 A. That's correct.

21 Q. All right. So if you would read Dr. Smithers's messages.

22 A. Okay. Dr. Smithers, "Are you free to talk right now?"

23 "Just need you for a couple of minutes."

24 Q. Darryl responds, "Sure."

25 A. Dr. Smithers, "By my count: DR, MB, JB, MR, FW, EB, MS,

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1 BH, GH, GB, RP, LK, KJ, RD, DW, SH, CM, PH."

2 "18."

3 "X."

4 Q. Before we move on, Agent Long, based upon your
5 familiarity with the patient files and the patients of
6 Dr. Smithers, those letters, do they match up with a number of
7 patients of Dr. Smithers first and last names?

8 A. They do correspond with names of patients.

9 Q. Okay. And then Dr. Smithers goes on to say, "3".

10 A. Yes. "3".

11 Then "=".

12 Then "54."

13 Q. And Darryl Williams responds with, "Sounds right." Is
14 that correct?

15 A. That's correct.

16 Q. Those were all sent on January the 21st of 2016?

17 A. Yes.

18 MR. LEE: Ms. Vogt, if you could go to page 17,
19 please.

20 BY MR. LEE:

21 Q. Again, we'll --

22 MR. LEE: Just down to there, please, Ms. Vogt.

23 BY MR. LEE:

24 Q. If you would read Dr. Smithers's phone.

25 A. Yes. Dr. Smithers, "I have 9 of your people scheduled

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1 for 2/2/16."

2 Q. And there's an attachment that's sent; is that correct?

3 A. It appears to be, yes.

4 Q. Okay. And just for the jury's information, what's an
5 attachment such as that that you see on this text message?

6 A. What do I see it as or --

7 Q. No. Just, what is an attachment?

8 A. Well, what it appears to me is that if there's text
9 messaging that's occurring and there's a photo or an image
10 that's inserted into that text message, or in that stream of
11 text messages.

12 Q. Okay. And does there appear to be two photographs that
13 are inserted in that stream of text messages?

14 A. That's correct.

15 Q. And they're both sent from Dr. Smithers?

16 A. They are.

17 Q. And then the message continues with Darryl Williams
18 saying, "Yes I will be meeting my brother. Today."

19 A. Dr. Smithers, "Excellent."

20 Q. Darryl responds with, "Will send ur money."

21 A. Dr. Smithers, "Bills are coming due, unfortunately," and
22 then, ":-/" .

23 MR. LEE: Ms. Vogt, if you could go to page 18,
24 please.

25 ///

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1 BY MR. LEE:

2 Q. Does this appear to be a picture here (indicating) that
3 was sent as an attachment that was sent in the previous
4 message?

5 A. It appears consistent with the thumbnail from the
6 previous page.

7 Q. All right. Well, it's a little canted there. It appears
8 to list a number of patients; is that correct?

9 A. Yes, sir.

10 MR. LEE: If you could go to the next page.

11 BY MR. LEE:

12 Q. This appears to be a similar picture?

13 A. Yes, sir, it does.

14 Q. And Bryan Harlow, Greg Harlow, Mike Robinette, Franklin
15 Scott Williams, Rebecca Pritt, and Lora Kicklighter, those are
16 all patients of Dr. Smithers, aren't they?

17 A. They were, yes.

18 Q. And it appears, based upon the numbers on the left, those
19 are times; correct?

20 A. It appears that way.

21 Q. There's only 30 minutes allotted for each patient?

22 A. That's correct.

23 MR. LEE: Page 20, please. And we'll start and go
24 down to the bottom half of the page. Thank you.

25 THE WITNESS: Mr. Lee.

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1 MR. LEE: Yes.

2 THE WITNESS: By looking at that, while they're
3 broken down 30 minutes, it looks to me the schedule is
4 actually incremental for 15 minutes. But each of those
5 patients on that day were scheduled for almost two blocks is
6 what it looks like to me.

7 MR. LEE: Okay.

8 THE WITNESS: Just for clarification on what we were
9 discussing.

10 MR. LEE: Okay. Thank you, Agent Long.

11 BY MR. LEE:

12 Q. And we'll start, Agent Long, at this message from Darryl
13 Williams to Dr. Smithers on January 27th of 2016.

14 "Text me 2 names to send money to."

15 A. Dr. Smithers, "Joel Smithers."

16 Followed up with "Angela Smithers."

17 Q. Darryl Williams responds with, "Cool I will let you know
18 when the eagle flies."

19 "My brother should be here by 6."

20 MR. LEE: Then if you could go to the next page,
21 Ms. Vogt.

22 BY MR. LEE:

23 Q. Dr. Smithers, top of the page there.

24 A. Dr. Smithers, "Excellent. Remember to send the codes."

25 Q. Darryl Williams responds with, "Ok. Mike Robinette send

1 Joel Smithers 900 Walmart to Walmart. From South Williamson
2 ky. His phone number is" -- then his phone number. "Control
3 number is" -- then there's another 9-digit number.

4 "Kelly Johnson is sending 900 dollars to AS. From
5 south Williamson ky Walmart. I will text his phone number and
6 control number ASAP."

7 "He will be sending it out in 20 minutes."

8 "If u can pick that up today I can repeat the
9 process again tomorrow."

10 "Or I can try to find a western union."

11 A. Dr. Smithers, "I'll let you know once we get it. I can
12 pick mine up tonight but wife may not be able to get it until
13 tm:-/".

14 MR. LEE: If you can go to page 25, Ms. Vogt.

15 And I'll only need the bottom portion of the page
16 there.

17 BY MR. LEE:

18 Q. These are January 28th of 2016; correct?

19 A. That's correct.

20 Q. Darryl Williams sends a message, "Hey can u get a bunch
21 of scripts ou tomorrow for say delivery so I can grab their
22 payments sat and bring it down this weekend."

23 "They get their welfare checks tonight or tomorrow
24 night."

25 A. Dr. Smithers, "You mean the next week crew?

1 MR. LEE: Then we'll go to the next page, Ms. Vogt.

2 BY MR. LEE:

3 Q. "Yea."

4 A. Dr. Smithers "... sure, send me a list of names."

5 Q. Darryl Williams responds, "If I don't grab their money by
6 say. They will spend it."

7 Then responds, "Sat."

8 A. Dr. Smithers, "True."

9 "So then you'll be using that to my at for this past
10 month?"

11 Q. Darryl Williams responds, "If I got their paper then they
12 will pay and I can bring it down sat or sun and keep down
13 paper work."

14 A. Dr. Smithers, "K."

15 MR. LEE: Page 27, please. Just the -- just that
16 portion (indicating).

17 BY MR. LEE:

18 Q. Now these are messages on January 29th of 2016; correct?

19 A. That is correct. Dr. Smithers, "List?"

20 Q. Darryl Williams responds, "Brian Harlow. Greg Harlow.
21 Rebecca Pritt. Lora Kicklighter. Franklin Williams. Michael
22 Robinette. Meshelle smith. She ask for an increase in mgs."

23 Are you familiar with what "mgs" means?

24 A. I interpret that to be milligrams.

25 Q. And the oxy -- or these Schedule II prescription pain

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1 medication we've been talking about, their quantities are
2 listed in milligrams?

3 A. The strengths of those pills are in milligrams, yes.

4 Q. Presumably the higher milligram in strength -- the higher
5 milligram numbers is a higher strength pill?

6 A. That's correct. More of the ingredient is in that pill.

7 Q. Okay.

8 MR. LEE: Page 29, please.

9 And we'll be looking at this whole page, Ms. Vogt.
10 So if you can blow up that first half.

11 BY MR. LEE:

12 Q. Darryl Williams sends a message, "Let me know if u right
13 any 20 or 30s. I will call Ky aina. And have them save
14 them."

15 A. Dr. Smithers, "Well all y'all that normally get 40's
16 sounds like they'll have to fill with 20's."

17 Q. Darryl Williams responds, "Pics can fill 40s on some of
18 them."

19 And the next message, "Poco."

20 Then the next message, "Ok. Lora Kicklighters can
21 do 180 20s. Instead of 90. 40s."

22 "Everyone else can fill at Poca."

23 "Let me know and I will call Ky aian."

24 Dr. Smithers responds to those messages.

25 A. Dr. Smithers, "I can't rely on Poca to fill all them when

1 they already fill a bunch other of my folks though :-/".

2 Q. Darryl Williams responds with, "About 5 on the list are
3 regulars at poco."

4 "Mike Robinette. Rebecca pritt. Franklin Williams.

5 Mike Bowe. Are reg custermers at Poca."

6 A. Dr. Smithers replies, "Oooooohhhh, ok."

7 Q. Darryl Williams responds with, "Lora. And Harlows and
8 meshelle Smith have never filled at poco."

9 A. Dr. Smithers, "K."

10 Dr. Smithers on January 29, 2016, "Cool."

11 Q. Darryl Williams responds with, "Have u mailed them yet?

12 A. Dr. Smithers, "No sir."

13 Then, "What address am I sending them to."

14 MR. LEE: Ms. Vogt, we'll go to the next page.

15 And just do that first half of the page.

16 BY MR. LEE:

17 Q. Darryl Williams responds with, "See if u can get a
18 Saturday morning delivery to" -- an address that he lists --
19 "in Stone ky 41567."

20 A. Right. Dr. Smithers, "Will dooskis brother."

21 Q. Darryl says, "If they can't guarantee Saturday delivery
22 there. Send to Dw. C/o. Hampton inn. 831 Hambley Blvd
23 Pikeville Ky 41501."

24 A. Dr. Smithers, "K."

25 Q. Darryl Williams responds with, "I will be waiting with a

1 different address with the first or 2nd won't work."

2 "Hey you ship them out?"

3 A. Dr. Smithers, "Headed to FedEx now... last truck doesn't
4 leave till 645 so you should still get there tomorrow morning.
5 I'll let you know which address works best and obviously which
6 one I send it to."

7 MR. LEE: Page 34.

8 (Indicating.)

9 THE WITNESS: Dr. Smithers on --

10 BY MR. LEE:

11 Q. These are messages on?

12 A. February 1, 2016.

13 "Still owe for these last 7(=\$21) plus \$141 for
14 shipping."

15 Q. Now, Agent Long, patient visits were \$300 a person; is
16 that correct?

17 A. That's correct.

18 Q. And seven patient visits would equally \$2,100?

19 A. That's correct.

20 Q. Sorry, I didn't mean to interrupt you. Please continue.

21 A. Dr. Smithers continues, "Correct."

22 Q. Darryl Williams responds with, "Ok I need steel and burl.
23 Mike Bowe and Samuel Hubbard."

24 "Everyone got their check in but where u put fill
25 dates on them. They won't pick them up till fill date."

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1 "Hard to outsmart the dumbest hillbilly. Lol."

2 A. Dr. Smithers, "K. They're still getting their scripts
3 though! It's no fucking different than the hillbilly that
4 paid \$600 straight up for two month's worth and got them both
5 post dated!"

6 Q. Darryl Williams, "I know. One of them came and paid.
7 Seen fill date. And I'm sure called everyone else. Lol."

8 "I will bring balance (2100) down Friday. Everyone
9 will pick them up by then."

10 A. Dr. Smithers, "K."

11 MR. LEE: Then we're going to page 39, please.

12 Actually, 38.

13 BY MR. LEE:

14 Q. Does this appear to be another attachment of a picture?

15 A. It does.

16 Q. And does this appear to be a money transfer receipt with
17 the sender information being a Mike Robinette in Pinsonfork,
18 Kentucky, and the recipient being Joel Smithers?

19 A. That is correct.

20 Q. And it appears at the bottom, I don't know if you can
21 read it.

22 MR. LEE: Or Ms. Vogt can blow this part up, please.

23 BY MR. LEE:

24 Q. Are you able to determine what the amount is?

25 A. It looks to me like it says, "Transfer amount \$900."

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1 Q. Okay. Thank you.

2 MR. LEE: Now we'll go to the next page. We'll go
3 from there all the way down to the bottom of the page
4 (indicating).

5 BY MR. LEE:

6 Q. I'm going to start here with a message from Darryl
7 Williams on November 1st, 2016. "Let me know when u have
8 picked up ur wires."

9 A. Dr. Smithers, "K."

10 Q. Darryl Williams responds with, "I will burn the paper
11 work."

12 A. Dr. Smithers, "It will prolly be tomorrow cause I'm hot
13 and heavy on the phone now trying to get everyone from today
14 and tomorrow taken care of."

15 Q. And then Darryl Williams responds with "J."

16 Then responds with, "K?"

17 A. Dr. Smithers, "Alright, here's my list of everyone else
18 that needs scripts: Gen Bowman, Jason Bowman, Earl
19 Blankenship, Sammy Hubbard, Connie Miller, KJ, DW, DReynolds,
20 MBowe, Rob Daniels, Jo Holloway."

21 Then, "7 down & that's the other 11 from this past
22 month that made a total of 18 folks."

23 And then, "Need confirmation on the list before I
24 start working on it."

25 MR. LEE: Ms. Vogt, we'll now go to page 50.

1 We're going to do the whole page.

2 BY MR. LEE:

3 Q. This message is sent February 25th of 2016; is that
4 correct?

5 A. That's correct. It states, "On another topic, when can
6 Debbie Reynolds come for an appointment?"

7 Then, "No. Not names that have DLs attached to
8 them."

9 Then, "Dr. Joel A. Smithers --

10 Do you need me to read this address?

11 Q. That's not necessary. That's an address of his clinic in
12 Martinsville?

13 A. In Martinsville, yes, sir.

14 Q. Then Darryl Williams responds with, "Doc if u can mail
15 Lora kicklighter Rebecca Pritt Franklin Williams mike
16 Robinette also John Harlow Greg Harlow Michele smith send that
17 FedEx so I can get them no later than Saturday."

18 A. Dr. Smithers, "K."

19 Dr. Smithers, "Why can't that first list of names
20 come to my office and be seen tomorrow?"

21 Q. Darryl Williams responds with "Well we're just trying to
22 make it fair and that group went last time."

23 "They were the last ones to see you so they should b
24 the last ones to see you again."

25 "Hey did u get ur wires?"

1 "I need address as to where to mail these money
2 orders tomorrow."

3 I have Kyaina. Holding enough medicine for the 7
4 people as long as they can get there Monday."

5 "This will work out good it being first of month."

6 "I will send 3. 1000 dollar money orders out to you
7 tomorrow. You will receive them on Monday."

8 A. Dr. Smithers replies with, "Dr. Joel A. Smithers" -- and
9 the address of the clinic in Martinsville, Virginia.

10 Q. Darryl Williams responds with, "If u mail those 7 out to
11 me tomorrow for Saturday delivery then Wensday Mike Bowe will
12 bring u down balance plus the 7 u mail out. Where it's the
13 first. Tuesday that will work perfect."

14 MR. LEE: We'll go to the next page.

15 And we'll be doing the whole page there also.

16 BY MR. LEE:

17 Q. Darryl Williams, the same date, February 25th, sends,
18 "Mike Bowe Jason bowman Kelly Johnson can come as early as
19 wensday next week."

20 "Deborah Reynolds can and will be there next week
21 She will let me know what day tomorrow."

22 A. Dr. Smithers, "Outstanding."

23 Then, "Monday and Friday are NOT available. I will
24 be closed."

25 Q. Darryl Williams responds with, "Ok."

1 "Ok please mail the following" -- then gives an
2 address in Stone, Kentucky, -- "for Saturday delivery. Fed X
3 can surely get here Saturday as they have before. Lora
4 Kicklighter Rebecca Pritt Michael Robinette Franklin Williams.
5 John Greg Harlow. Brian Harlow. Michelle Smith."

6 "Also Michelle ask if she could be raised on Mg on
7 her oxymorphone from 20s to 30 or 40s. I am not asking she is
8 you can call her at" -- and provides a phone number -- "Or
9 work number," -- then provides another phone number. "If you
10 call work at ARH Hospital don't tell or leave message to
11 anyone that u are a doc. They frown on employees -- "on any
12 employee seeing out house Docs."

13 "Thanks I will text tracking number."

14 "Have you a tracking number in an hour."

15 "Please fed x for Saturday delivery."

16 A. Dr. Smithers, "Outstanding."

17 "You're aware that's gonna be another \$70.50,
18 right?"

19 Q. Darryl Williams, "Yep."

20 A. Darryl Williams, "Which day (Tuesday, Wednesday, or
21 Thursday) will Mrs. Reynolds be able to come?"

22 Q. Darryl Williams responds with, "Not sure yet. I will
23 find out."

24 A. Dr. Smithers, "Is it 'Mullins Fork', or 'Mullen Fork', or
25 'Mullens Fork'?"

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1 Then, "FedEx is saying they can't get it there til
2 Monday."

3 MR. LEE: Next page, please. We'll be doing most of
4 the page.

5 THE WITNESS: Dr. Smithers, "Got another address?"

6 "Can't get a hold of you. Guess Monday is when
7 you'll get it."

8 "Still \$70.50 though!!"

9 And then there are -- looks like two messages that
10 are sent back to back.

11 Then, "There's the date so you know I'm not making
12 this shit up."

13 MR. LEE: Okay. We're going to page 64.

14 And we're just going to look at --

15 THE WITNESS: Starting on March 15th, 2016.

16 Dr. Smithers, "HellOoooooo" -- with several Os.

17 "When would be a good time for us to speak by phone,
18 sir?"

19 BY MR. LEE:

20 Q. Then the next message is from April the 4th from Darryl
21 Williams. "Lora got her scripts Thursday and she has been as
22 far north as Dumprees Va, (Richmond) and everywhere where in
23 Wv and she had to return to Buffalo Pharmacy where he will
24 only fill 60. It's really stressed her out and she asked me
25 to text ya and see if you could this one time write her about

1 60 roxy 30s to compensate for her losing 30 opanas. This
2 would only be a one time thing because kentuckiana will be
3 able to fill her whole prescription in may. She has drove all
4 day Friday, sat, and Sunday to several pharmacies and has had
5 no luck. If you can do this for us, Kerry and Rabi hatfield
6 is there now and would bring the prescription to her.
7 Thanks."

8 A. Dr. Smithers, "K."

9 Then, "I sent the script with Kerry in a secure
10 envelope. She said she'd give it to you or Lora tomorrow."

11 Q. Darryl Williams responds with, "I thank from the bottom
12 of my heart."

13 MR. LEE: Go to page 186, please.

14 BY MR. LEE:

15 Q. We'll start here on -- at September 9th of 2015, at 1:34.
16 Darryl Williams sends, "Have you had any new patients last
17 name Bowe, Blankenship, Hubbard, or Daniels?"

18 A. Dr. Smithers, "Yes to Hubbard and Daniels."

19 Then, "Not sure about the other two... Why?

20 Q. Darryl Williams responds with, "This is confidential
21 correct?"

22 MR. LEE: And then to the next page. Do the first
23 half.

24 THE WITNESS: Dr. Smithers, "Yup."

25 BY MR. LEE:

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1 Q. "Hubbard was discharged from doc in Huntington, Paula
2 Blankenship was kicked out of her doctors office from being
3 spaced out on Xanax, that night she was in hospital for OD,
4 her boyfriend Bo Daniels was going to the same doc she was."

5 A. Dr. Smithers, "Wow!"

6 Q. "It's my understanding that all these people are in
7 trouble due to Paula Blankenship OD and they're all supposed
8 to be selling their medicine."

9 A. Dr. Smithers, "Idiots."

10 Q. Darryl Williams responds with, "A guy named Mike Bowe
11 fell at home and they thought he ODed but his wife just found
12 him passed out on the floor. Just might want to watch these
13 ones. Maybe just write them enough so they won't come back."

14 "Hubbard goes to ER every day after he runs out of
15 medicine. I just want you to be aware of some bad people."

16 Do you recognize those names?

17 A. I do.

18 Q. Were those patients of Dr. Smithers?

19 A. Yes.

20 Q. And were they patients of Dr. Smithers after September of
21 2015, do you know?

22 A. I don't recall without reviewing their patient files.

23 THE COURT: All right. Mr. Lee, we're going to
24 break for lunch at this time.

25 MR. LEE: Okay. Thank you.

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1 THE COURT: Ladies and gentlemen, if you'll follow
2 the bailiff out. And if you'll be back in one hour.

3 (Proceedings held in the absence of the jury.)

4 THE COURT: All right. Counsel, is there anything
5 we need to take up?

6 Very well. If not, we'll be in recess for one hour.

7 (Proceedings suspended at 12:29 p.m. and resumed at 1:34
8 p.m.)

9 THE COURT: Are we ready for the jury?

10 MR. WILLIAMS: We are.

11 MR. RAMSEYER: Your Honor, just, since we have a
12 moment. If we could talk a little bit about scheduling for
13 the trial. We've moved much quicker than we anticipated,
14 which I hope everybody is happy with, and we're going to try
15 to wrap this up much quicker than anticipated. We have one
16 sort of logistical issue. We have an expert witness coming in
17 tomorrow from Texas. Right now she's having some trouble with
18 her plane. We think she's going to get here today -- or here
19 tonight and be able to testify tomorrow. But she'll probably
20 be the only witness we'd have tomorrow. Then our medical
21 expert that's gonna -- she's testifying about the causation of
22 death. Our other expert that's going to be testifying about
23 medical necessity and within the scope of professional
24 practice, we anticipate calling him Thursday when we come
25 back.

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1 So I just wanted the Court to know that that's our
2 situation. He's in Manassas, so --

3 THE COURT: So will that be likely the Government's
4 evidence then?

5 MR. RAMSEYER: Likely, Your Honor. I don't want to
6 commit. There might be some small tweaks, but that would be
7 the bulk of what we have left.

8 THE COURT: All right. So we just have the expert
9 tomorrow, assuming that she gets here.

10 MR. RAMSEYER: Yes, Your Honor.

11 THE COURT: And who, again, is the victim that the
12 Government contends is attributable to the --

13 MR. RAMSEYER: It's Heather Hartshorn.

14 THE COURT: All right. There is the question of the
15 defendant's expert.

16 Mr. Williams, so what we've heard today is that the
17 Government -- that the Government may conclude next Thursday.

18 MR. WILLIAMS: I believe that's correct. I think at
19 the present time it does not look like our expert is going to
20 able to testify. We've been in contact with him. Certainly I
21 can let the Court know by first thing in the morning as to
22 whether or not he would be. But at this time I think he is a
23 no, Your Honor.

24 THE COURT: All right. Well, if he's not a no, then
25 I need to decide the Government's motion to exclude him. And,

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1 so, if you could tell me that tomorrow.

2 MR. WILLIAMS: I certainly will, Your Honor.

3 THE COURT: So, all right. Thank you, counsel.

4 We'll have the jury in.

5 (Proceedings held in the presence of the jury.)

6 THE COURT: All right. We're ready to go again.

7 You may proceed, Mr. Lee.

8 MR. LEE: Thank you.

9 Ms. Vogt, if you could blow that up for me, please.

10 BY MR. LEE:

11 Q. Agent Long, if you remember, we were looking at the text
12 messages between Darryl Williams and Joel Smithers.

13 Specifically, some text messages from September the ninth of
14 2015. And Darryl Williams sends a text message that says,
15 "Hubbard was discharged from doc in Huntington. Paula
16 Blankenship was kicked out of a doctors office for being
17 spaced out on Xanax. She was in the hospital for OD. Her
18 boyfriend Bo Daniels was going to the same doc as she was."

19 We talked, I think I asked the question if some of
20 those names sounded familiar to you as patients --

21 A. They did.

22 Q. -- of Dr. Smithers?

23 MR. LEE: Ms. Vogt, if I could ask you to pull up
24 Government's Exhibit 105, please, page 7.

25 ///

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1 BY MR. LEE:

2 Q. Showing you -- this is a summary chart that you put
3 together; is that correct?

4 A. That is correct.

5 Q. And it lists a Robert Daniels having been a patient of
6 Dr. Smithers beginning in September of 2015 and going on for a
7 number of months; is that correct?

8 A. That's what it shows, yes, sir.

9 Q. And there is also a Hassel Daniels above him as a
10 patient.

11 A. That's correct.

12 MR. LEE: Ms. Vogt, if you would go to page 15,
13 please.

14 I'm sorry, page 14.

15 BY MR. LEE:

16 Q. And this is page 14 of that same document. And it shows
17 a Sammy Hubbard being a patient of Dr. Smithers; is that
18 correct?

19 A. That's correct.

20 Q. And both Sammy Hubbard and Robert Daniels, based upon
21 your spreadsheet, the chart that's been admitted, began
22 receiving significant opiates from Dr. Smithers in the fall
23 and early winter, specifically, September-November of 2015; is
24 that correct?

25 A. That's correct.

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1 Q. Right around that same time that that text message
2 conversation occurred?

3 A. Yes, sir, that's correct.

4 MR. LEE: Ms. Vogt, if we could go back to the
5 Darryl Williams's texts. I think it's DiJ 1000 -- DWi-1000.

6 Thank you.

7 Page 201, please.

8 And if we could --

9 BY MR. LEE:

10 Q. Now, Darryl Williams sends a message on September 28th of
11 2015, and says "Scotty swears he has never been to hope and I
12 believe him. He was told to say he went to hope and could not
13 get his med records."

14 "Scotty is willing to pay a 300 dollars F" -- and
15 there are a number of dashes -- "fee".

16 A. Dr. Smithers responded, "So for the rest of this week we
17 have the following days and times available:"

18 "Tomorrow (Wed. 9/30) from 12-2:30 is open (6 slots)
19 and 2more slots at 3:30 and 4:00."

20 "Then Thursday 10/1 seven slots are available:
21 11:30, 12:00, 1:00, 1:30, 3:00, 3:30, 4:00."

22 "I'm working on Scott's situation."

23 Q. Darryl Williams responds, "Ok Scotty can fed x u a 300
24 money order and u can fed x his scripts back. I will get the
25 fed x envelope ready so you just drop scripts in and it will

1 come to me."

2 A. Dr. Smithers, "Hold on to that thought. Let me figure
3 out my end of things first."

4 Q. Darryl Williams responds, "Roger that we are holding in
5 the pattern (pilot lingo)."

6 "I found several patients (3) that could come
7 tomorrow but all them are broke till the 3rd of the month. I
8 could collect their funds and Bring to you or send it to
9 Walmart."

10 "They get their funds Friday evening."

11 "The 3 are Brian Harlow. Greg Harlow. And Michael
12 Bowe."

13 "This is not the same Mike Bowe who is bad actor.
14 It's his dad a good guy. All of these guy has MRI."

15 MR. LEE: Then the next page, please.

16 BY MR. LEE:

17 Q. "They all are honest and need treatment. I will have ur
18 funds for those guys Saturday and will wire to ya or bring
19 Monday."

20 A. Dr. Smithers, "Ok."

21 "Sounds good."

22 "Tell them to come at 1330 to start paperwork and
23 counseling."

24 "Had 5 walkins today that I've scheduled for
25 tomorrow... All new."

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1 Q. Williams responds, "Mike Bowe is driving and he will
2 bring Franklin (Scotty) Williams F Up Fee please send Scott's
3 scripts by Mike Bowe. Scotty it was 90-20mg roxy and 90-40mg
4 oxymorphone. And that is what Jackson in Buffalo has to fill
5 Scotty's scripts."

6 MR. LEE: That's enough for that one, Ms. Vogt.

7 We'll be going to page 218.

8 I'm sorry we're going to -- not the top part of the
9 page.

10 BY MR. LEE:

11 Q. These are messages from October the 8th of 2015. Darryl
12 Williams starts with, "How late u been in this eavning. 2.
13 You open tomorrow?"

14 A. Dr. Smithers, "Well yesterday was rough... Here til
15 2200'ish."

16 "Never open Friday."

17 "...an early holiday in the week does create an
18 exception to that rule however."

19 "How late are they gonna be?"

20 "I'm almost done with everyone else."

21 Q. "Trying to find out now."

22 "Real late."

23 "Can u hide their scripts or mail them? I can wire
24 u your funds."

25 MR. LEE: Oh, next page, sorry.

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1 Thank you.

2 We'll be doing the whole page, Ms. Vogt, so if you
3 could blow up the first half.

4 BY MR. LEE:

5 Q. "I think they get 120 roxy 20 and 90 40s OP ER."

6 "Mail to same place or hide either one will work."

7 A. Dr. Smithers, "How far away are they?"

8 "I'm seeing what would be my last pt now."

9 Q. "She said if u can hide them she will ride down and get
10 them."

11 "I think they get 120 roxy 20 and 90 40s
12 OXymorphone."

13 "Lora Kicklighter and her mother Rebecca Pritt. And
14 Michael Robinette."

15 "She just drove to and from Chicago and then headed
16 ur way and run out of steam."

17 A. Dr. Smithers, "No worries."

18 "I'll mail them."

19 Q. "I think Robinette got about the same."

20 "Is post office open late there?"

21 "She can fill tomorrow or Saturday."

22 A. "Nope."

23 MR. LEE: Then the rest of that page, Ms. Vogt.

24 THE WITNESS: "Calling to see if UPS can."

25 ///

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1 BY MR. LEE:

2 Q. "Mail to Charleston wv marriot Hotel Darryl Williams/Lora
3 Kicklighter" -- then there's an address in Charleston, West
4 Virginia. "Next day air. Saturday delivery. Be sure to mark
5 Saturday delivery."

6 MR. LEE: Page 221, please.

7 BY MR. LEE:

8 Q. These are text messages on --

9 I'll just start here. Looks like October the 8th,
10 2015. Darryl Williams, "Thanks."

11 "Thanks Doc for the Fed X."

12 "Hey I did not receive Stepinie Youngs or Charles
13 Hudnalls stuff how ever you did send a set of" -- then there
14 is "(.--/// S) for a Robert Hudnall who I don't know."

15 So if you can fed x. Me mine. Stepinie Youngs.
16 And Charles Hudnall."

17 "I got doc visits today here so I can be down
18 wensday."

19 "Charles Hudnall is 55."

20 "Please send Fed X package to Darryl Williams" --
21 then there's an address listed in Stone, Kentucky.

22 "I would love to get Package. Tomorrow so I can
23 come ur way Wensday."

24 A. Dr. Smithers, "Yep. Fuck me, I just found Steph's a few
25 minutes ago:-/." Sorry about that.

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1 MR. LEE: And we are now going to go to page 226.

2 Blow up of this part.

3 BY MR. LEE:

4 Q. Does this appear to be a customer receipt from Joel
5 Smithers in Greensboro, North Carolina, to Darryl Williams at
6 a Marriott hotel in Charleston, West Virginia?

7 A. That's what it appears to be.

8 Q. And the date on that is October the 9th of 2015?

9 A. That's correct.

10 MR. LEE: Thank you.

11 Page 227.

12 BY MR. LEE:

13 Q. Darryl Williams on October 12th, "Debbie Reynolds can get
14 loose Thursday. So I think Thursday will be good for us."

15 A. Dr. Smithers, "Alright, I'll get Charles, yours, and
16 Ms. Young's in the mail later today. I'll text you the
17 tracking info and whatnot once it's done."

18 "Got a new pharmacy I need to tell you about too!
19 Great guy and excellent service. Remind me to tell you about
20 him."

21 Q. "Cool. Where is it?"

22 A. "He's willing to see 20 pt's of mine per week."

23 "Jeffersonville, ID."

24 "On the other side of Louisville right off I64."

25 Q. "Cool."

1 A. A little topper sign, "I-64".

2 Q. Darryl Williams responds with, "Yep I know where it is."

3 And then there appears to be an attachment sent; is
4 that correct?

5 A. It does appear that way.

6 MR. LEE: Okay. Ms. Vogt, will you turn to
7 page 229, please.

8 BY MR. LEE:

9 Q. And does this appear to be the blow up of the attachment
10 that was sent?

11 A. It does, yes.

12 Q. Okay. This is -- appears to be some kind of business
13 card or advertisement of some kind for the Kentuckiana
14 Pharmacy; is that correct?

15 A. It appears to be a business card for that pharmacy.

16 Q. Okay. And Dr. Assad Nasser Pharm D, listed as the
17 pharmacy director?

18 A. That's correct.

19 Q. Says he's available 24/7?

20 A. Yes, sir.

21 Q. This is located in --

22 A. Jeffersonville.

23 Q. -- Jeffersonville, Indiana.

24 MR. LEE: Page 231, please.

25 BY MR. LEE:

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1 Q. Darryl Williams writes on October the 18th, "What time u
2 be in tomm morning?"

3 A. "I can fix the mscontin and shorten their wait. The
4 other issues are unchangeable."

5 "We can do payment plans for them to catch up over a
6 couple of months."

7 Q. Darryl Williams responds, "I feel if they got 90 and 90
8 or 90 and 60. They will stick with ya. They all are existing
9 pats."

10 "No I can pay you for all of them this Thursday
11 coming or Monday a week from tomm."

12 "They are bringing me collateral. To hold until I
13 get ur funds."

14 "If u can fed x. Their scripts that will give all
15 my bunch a little break from traveling this month and give u a
16 little break as well."

17 "No instead of Fed x ing I will send Brandon early
18 in morning so most of the can fill tomorrow."

19 A. "I have no problem switching them. I am quickly seeing
20 that MSContin is almost a complete waste of time... Everyone
21 does so well on opana and sleeps better and comes back and
22 really has no complaints... It seems to simply be a better
23 medicine."

24 Q. "Yes I will warn all they must come down next month."

25 "The last few guys we have done is as happy as a

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1 puppy with 2 peckers."

2 MR. LEE: Now to page 238.

3 BY MR. LEE:

4 Q. Darryl Williams writes on October the 29th of 2015, "Good
5 afternoon."

6 "I am not suggesting anything however Brian Harlow
7 asked if u can keep his break thru the same. Like u did last
8 visit. Greg Harlow and Neil Jewell ask for 90 and 90 we all u
9 are Doc and they will take what you write my friend."

10 Then he goes on to say, "Greg Harlow -- and lists
11 what appears to be a date of birth.

12 Then, "Sorry that was Brian Harlow."

13 "Brian Harlow -- then appears to list a date of
14 birth.

15 Then, "Greg Harlow -- and appears to list a date of
16 birth.

17 A. "Lol."

18 Q. "Niel Jewell?"

19 A. "Need it."

20 Q. And Darryl Williams responds, "Address ups store /.
21 Darryl Williams -- then gives an address in Lexington
22 Kentucky. "Next day air."

23 Then, "Hotels was to expensive 500 a night. So just
24 send it to ups store."

25 MR. LEE: And page 248, Ms. Vogt.

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1 BY MR. LEE:

2 Q. Does this appear to be a picture of a prescription
3 written for a Neil Jewell on October the 29th?

4 A. That's correct, sir.

5 MR. LEE: Page 249.

6 BY MR. LEE:

7 Q. Is this a -- the first prescription was for oxymorphone;
8 is that correct?

9 MR. LEE: Or can you go back, please?

10 THE WITNESS: Yes, sir, that's correct.

11 BY MR. LEE:

12 Q. And the next prescription is again, to Neil Jewell, dated
13 10-29-2015. Oxycodone 15 milligram.

14 A. That's correct.

15 Q. And 60 milligrams.

16 A. That's correct.

17 MR. LEE: Can you go back?

18 BY MR. LEE:

19 Q. And the other one is for 90 pills.

20 A. That's correct.

21 Q. Which is what Mr. Williams was referring to in his text
22 message to the doctor.

23 A. It does seem that way.

24 MR. LEE: Page 250 -- actually, 251.

25 BY MR. LEE:

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1 Q. Is this a shipping receipt from Joel Smithers to Darryl
2 Williams on Friday, October 30th, 2015?

3 A. Yes, sir.

4 Q. Shipping from Greensboro, North Carolina, to Lexington,
5 Kentucky.

6 A. That's correct.

7 MR. LEE: Page 261.

8 BY MR. LEE:

9 Q. If you could start with Joel Smithers's text on November
10 the fourth of 2015.

11 A. "I literally am booked solid this week and them missing
12 their appts really fucks things up :-/".

13 Q. Darryl Williams responds, "Can we get their scripts then
14 do a mock run visitation?"

15 "I mean come see ya after the fact."

16 "Need to keep Ky In. Pharmacy rolling."

17 "Next week. Darryl williams Charles Hudnall.

18 Stephiney young Mike Bowe Robert Daniels."

19 A. "Who is coming with Lora today?"

20 "I need to know so I can pull their files. Thanks
21 much!"

22 Q. "Franklin (Scotty) Williams."

23 "Mike Robinette."

24 "Lora Kicklighter."

25 "We need her mothers. Rebecca Pritt"

1 A. "Excellent. Got it."

2 Q. Darryl Williams responds, "Pharmacy ordered up to 90 -
3 15s. And 90 - 40s. Again I am not suggesting anything."

4 "1500 cash -- excuse me, "1500 cash is what she is
5 has plus she has 300 dollars for ur counselor."

6 "I will bring any balance."

7 MR. LEE: If we could go to page 271.

8 BY MR. LEE:

9 Q. And I'm going to start here, November 20th, 2015, Darryl
10 Williams, "Check ur records and see what's how much is due. I
11 think 900. Paid. 1500 last payment."

12 A. "Your peeps always have to have their \$75 counseling fee.
13 I can't owe the counseling service money. Not to mention it
14 looks shady as fuck when 4 or 5 people come through and say
15 someone else is paying for them."

16 Q. Darryl Williams responds, "You are right."

17 Then says, "Ok 5 on Monday. See if they can at
18 all can come Tuesday. Any time. I have 3. Harlows. That
19 need to come."

20 "I need to check and see if Lisa Aliff paid you 600
21 dollars at her last visit just this last week. Because I had
22 paid 300 on her bill."

23 MR. LEE: We're going to go to page 279.

24 BY MR. LEE:

25 Q. Darryl Williams on November the 23rd states, "If my

1 oxygen gets here today I will come tomorrow."

2 "I need to get Niel Jewell's and Deborah Reynolds."

3 A. "K."

4 Q. "Not unless u want to send my scripts with mike Bowe.

5 And I will come up next week."

6 "I can send ur funds tomorrow via Walmart."

7 A. "Walmart or Bluebird?"

8 Q. "Either one."

9 A. "Is walmart just a money order/wire?"

10 Q. "I owed u 900 Plus 1350 today and Darryl Williams Niel
11 Jewell and deb Reynolds make it a total 3150."

12 A. "K."

13 MR. LEE: Next page, please.

14 BY MR. LEE:

15 Q. On November 23rd, Mike -- excuse me, Darryl Williams
16 says -- November 23rd, 2015.

17 "Mike is my driver today and next door neabor. U
18 can trust him."

19 A. "K."

20 Q. "Yes I will send u 2850."

21 A. "He seems like a good guy."

22 "Sounds good to me."

23 "Bluebird can't handle that much in one day so just
24 wire it walmart to walmart."

25 Q. "The 2850 includes. Me deb and Niel Jewell."

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1 A. "K."

2 Q. "Kevin smith in jail for robbing flat screens at local K
3 Mart."

4 "Lol."

5 MR. LEE: Next page, please.

6 THE WITNESS: Dr. Smithers, "Dumbass."

7 "My counselor is ultra suspicious :-/".

8 BY MR. LEE:

9 Q. "About what?"

10 A. "You paying for everything."

11 "And the possible connection to Bo Daniels."

12 "He HATES Bo Daniels."

13 Q. "I hate Bo Daniels."

14 A. "Lol."

15 "Seems like a lot of folks do!!!"

16 Q. "He is a scum bag. That scares little people."

17 MR. LEE: Page 285, please.

18 Ms. Vogt, we'll do the whole page on this one.

19 BY MR. LEE:

20 Q. On November 29, 2015, Darryl Williams writes, "Hey we are
21 picking up Rachel Miller and Deborah Reynolds scripts this
22 morning and the Pharmist will not have 30 mg opana. ER. What
23 can he replace that will can he give them double of the 15s.
24 Or can he give them 40s. If u can change the scripts. He
25 won't get 30s for 3 weeks."

1 A. "He can double the 15's."

2 Q. "Okie dok. You might have to inform him or call him."

3 A. "If he has any questions, he can call me."

4 Q. "Ok."

5 "Ok got 5-6 people coming 1-stearl Blankenship who

6 is having kidney removed tomorrow. 2 his son could be seen

7 today as well Burl who is hunched backed. Like egor on young

8 Frankenstein."

9 "Every one today has money.":

10 "Mike Bowe is bringing u 1000 dollars. I am

11 bringing rest."

12 A. "K."

13 "Swamped."

14 Q. "Good for the wallet."

15 A. "Indeed."

16 Q. "Geneva Bowman is with Steral and Burl then Mike Bowe is

17 bringing 3 Harlows."

18 A. "K."

19 "Thx."

20 MR. LEE: Page 286.

21 BY MR. LEE:

22 Q. Let's start November 30th, 2015. Darryl Williams,

23 "Remember he ain't got no opana 30 s until three weeks from

24 now."

25 A. "Yessa massa."

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1 Q. "Ky In pharm. only has 20s and 40s opana until 12/22."

2 "Plenty of Roxies."

3 "Jfyi."

4 A. "Ty!!!"

5 MR. LEE: Page 287, the next page.

6 BY MR. LEE:

7 Q. "Good morning."

8 Sorry. Text messages start on December 2nd, 2015.

9 Darryl Williams, "Good morning."

10 "Yep. 4. On their way. They all have their 300
11 fee. And GF is bring u a grand."

12 A. "Excellent."

13 Q. "I will walmart the otha grand or bring it next week."

14 A. "K."

15 "Just plan to bring it."

16 "Remember though:"

17 "I'm not back in the office until Monday 12/14."

18 MR. LEE: Page 288. The next page, please.

19 BY MR. LEE:

20 Q. Again, on December 2nd, Darryl Williams says, "Hope u
21 don't cut anyone today. I have to hear them cry for a month.
22 Lol."

23 A. "Wow."

24 "Lol."

25 Q. "Lol."

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1 A. "We'll see... Most folks are just increasing the OP or
2 holding steady."

3 Q. Darryl Williams responds with, "Yea hook them up."

4 "Ky. In. Is saving op 40s for all these guys."

5 A. "Good."

6 Q. "Got app with lung doc this morning."

7 A. "Outstanding!!"

8 MR. LEE: Page 297.

9 BY MR. LEE:

10 Q. These are messages from December 22nd, 2015. I'll start
11 with Darryl -- with the Joel Smithers text there.

12 A. "So who's bringing my grand?"

13 Q. Darryl Williams responds, "Mike Bowe is bringing
14 Hubbard."

15 "I will give it to him."

16 A. "Lol. Excellent.":

17 "Funfun."

18 "Thank ya much."

19 Q. "Thank you doc."

20 "Are u going to be in office seeing patients any day
21 next week?"

22 A. "No sir."

23 Q. "Lora Mae. Her mother. Mike Robinette and Scotty
24 Williams has app on 6th but they will be out of meds for 4
25 days."

1 MR. LEE: Page 300 please.

2 BY MR. LEE:

3 Q. Going to start on 12-28-2015, with the Darryl Williams
4 text message that reads, "Hey I talked to Brian Elkins he is
5 needing to get his scripts can he and Mike Bowe drive to
6 Greensboro and meet ya and pay ya and pick up his scripts?"

7 A. "No."

8 Q. "OK."

9 A. "He can give me a valid card number that lets me accept
10 payment then I'll mail his scripts to him."

11 Q. "Ok. I was going to send my funds too."

12 MR. LEE: Page 303.

13 BY MR. LEE:

14 Q. These are on text messages -- beginning on December 31st,
15 2015, with Dr. Smithers.

16 A. "No one is being seen Monday."

17 "I'll be mailing everyone's scripts."

18 Q. "When u mailing?"

19 MR. LEE: Next page, Ms. Vogt.

20 We'll be doing this whole page.

21 THE WITNESS: "Whoever wants to can make a
22 donation."

23 BY MR. LEE:

24 Q. "Oh we can make donation."

25 "3 Harlows was scheduled for Monday."

1 A. "I have a second Bluebird card we can set you up on and
2 they can mail out a real one to you in a few days."

3 Q. "Greg Brian and his wife."

4 A. "I'm gonna call you and explain at some point."
5 "Office will be closed for 4-5 wks for renovations."
6 "Leaking roof :-/".

7 Q. Darryl Williams responds with, "K."
8 "And Geneva Bowman."
9 "Wish you could mail those today we would get them
10 Monday."

11 A. "Problem: I don't have their charts with me."
12 Q. "I can get what they had last time."
13 A. "So can I."
14 MR. LEE: Next page please.
15 We're going to do this whole page also.
16 BY MR. LEE:
17 Q. Darryl Williams responds with, "Cool."
18 A. "Just need first and last names and DOBs."
19 Q. "Ok."
20 "Give me 5 mins. Ship that bluebird out."
21 "Too."
22 "Make it Saturday delivery I will pay for shipping."
23 "Geneva Bowman -- and it appears to be a date of
24 birth.
25 "Bryan Harlow -- another date of birth. "He got.

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1 90-oxymorphone and 30-30s roxy."

2 "Michalle Smith -- a date of birth -- "She got 60 ms
3 cotton 50mg. And 30 roxy 10mg."

4 "Greg Harlow -- another date of birth. "He got
5 90-oxymorphone 40s and 30 R 30s."

6 "Lora Kicklighter -- date of birth -- "90
7 oxymorphone and she ask can she get her roxys back. She has
8 been good."

9 "Mike Robinette -- date of birth -- "90-oxymorphone
10 40s and 30 R 30s."

11 "Franklin Williams I needs his Dob."

12 "Franklin Williams -- a date of birth -- "90- 40s
13 oxymorphone and 20-15s roxy."

14 "Rebecca Pritt. 90 40s -- I'm sorry. "Rebecca
15 Pritt -- appears to be a date of birth -- and 20-20s R."

16 "Please ship UPS."

17 "If u can ship today let me know and I will give u
18 address."

19 A. "Go ahead and give me the address."

20 MR. LEE: Next page, please.

21 Just one more level down.

22 THE WITNESS: "I just spoke to UPS here locally and
23 the trucks have already left for the day. The earliest
24 anything will leave now is Saturday and he said if we next day
25 air it, it would arrive by Monday morning. So that is what

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1 I'm planning to do."

2 "What address do you want me to send it to."

3 BY MR. LEE:

4 Q. "Give me a minute."

5 A. "It's ok... You have until Saturday."

6 "Lol."

7 MR. LEE: Okay. Page 311, please.

8 BY MR. LEE:

9 Q. Beginning on -- there's a text on January 2nd of 2016
10 from Joel Smithers.

11 A. All is shipped. Picture of tracking and receipt to
12 follow. Total accounting as follows: 2400 for 8 est. 450
13 for new. Plus 1000 already owed = 3850 donated Plus shipping
14 as pictured below:"

15 Q. "Ok. U got it."

16 MR. LEE: And page 313.

17 BY MR. LEE:

18 Q. Does this appear to be a shipping receipt dated Monday, 4
19 January, 2016?

20 A. Yes, sir.

21 Q. From Joel Smithers in Greensboro, North Carolina, to
22 Darryl Williams in Lexington, Kentucky?

23 A. That is correct.

24 MR. LEE: Page 316, please.

25 ///

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1 BY MR. LEE:

2 Q. And that was a shipping date of January 4th; is that
3 correct?

4 A. Apparently, yes, sir.

5 Q. Okay. And this is text messages starting on January the
6 5th of 2016; correct?

7 A. Yes, sir.

8 Q. So that's the day after the shipment receipt we just
9 looked at from Dr. Smithers to Darryl Williams.

10 A. That's correct.

11 Q. Darryl Williams says, "Mail Michael Robinettes to Darryl
12 Williams -- and provides an address -- "in Stone, Ky."

13 A. "K."

14 Q. "You can send Michael Bowes as well."

15 "My Older brother will most likely become a new
16 patient he got laid off at work. Where they 0 tolerence
17 policy."

18 "Also Deborah Reynolds."

19 "Deborah Reynolds -- he provides a date of birth.

20 "Michael Bowe -- and what appears to be a date of
21 birth.

22 A. "K."

23 "New cell to text/call me on:"

24 Do you want me to read the number?

25 Q. I'm sorry.

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1 A. Do you want me to read the number?

2 Q. No.

3 A. Okay.

4 MR. LEE: At this time, Your Honor, we're done with
5 those.

6 At this time, Your Honor, I would move to introduce
7 DR-1000, which are text messages from Dr. Smithers's phone
8 that involve or reference Debbie Reynolds, a patient.

9 THE COURT: It will be admitted.

10 (Government's Exhibit DR-1000 received.)

11 MR. LEE: Ms. Vogt, if you could pull up page 23,
12 please.

13 BY MR. LEE:

14 Q. Agent Long, this is a text message from Darryl
15 Williams -- or from Joel Smithers to Darryl Williams; is that
16 correct?

17 A. It appears to be, yes, sir.

18 Q. And what's the date of that?

19 A. October 25th, 2015.

20 Q. Joel Smithers says what to Darryl Williams?

21 A. "Any idea when Mrs. Debbie's going to pay me a visit?"

22 MR. LEE: Page 25.

23 Can you go back one page? It's page 24.

24 BY MR. LEE:

25 Q. This is a text message from when?

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1 A. November 4, 2015.

2 Q. What does Joel Smithers say?

3 A. "Is Debbie gonna help finance?"

4 MR. LEE: Page 25.

5 BY MR. LEE:

6 Q. Darryl Williams says, "I need to get Niel Jewell's and
7 Deborah Reynolds."

8 A. Dr. Smithers replied, "K."

9 Q. "I owed u 900 Plus 1350 today and Darryl Williams Niel
10 Jewell and deb Reynolds makes it a total 3150."

11 MR. LEE: Page 29.

12 BY MR. LEE:

13 Q. Now this is December the second of 2015; is that correct?

14 A. That's correct, sir.

15 Q. What does Joel Smithers send to Darryl Williams?

16 A. "When's Debbie gonna come see me?"

17 MR. LEE: Page 33.

18 BY MR. LEE:

19 Q. What's the date on this text message?

20 A. April 12, 2016.

21 Q. So four months after the last one we just looked at.

22 A. That's correct.

23 Q. And is this from JASmithers@gmail.com?

24 A. That is correct.

25 Q. What does its say?

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1 A. "I've got Kelly Johnson listed for an appointment this
2 Thursday at 12:30. Does anyone else need to come with him?
3 Will he be coming? Is Debbie ever going to come?"

4 Q. That was on April the 2nd of 2016.

5 A. April 12.

6 Q. I'm sorry, April the 12th, 2016.

7 A. Yes, sir.

8 MR. LEE: Ms. Vogt, could you pull up Government's
9 Exhibit 105. Page 33, please.

10 BY MR. LEE:

11 Q. This is your summary of prescriptions that were sent or
12 that were provided, written for Deborah Reynolds by Joel
13 Smithers; is that correct?

14 A. Yes, sir.

15 Q. And it appears there are prescriptions, 1, 2, 3, 4, 5, 6,
16 7, 8 prescriptions between October and February of 2016.

17 A. That is correct.

18 Q. And that's the same Deborah Reynolds that he keeps
19 asking, is she ever going to come see me?

20 A. That was my understanding, yes.

21 MR. LEE: Okay.

22 Thank you, Agent Long.

23 THE WITNESS: Yes, sir.

24 MR. LEE: Please answer any questions defense
25 counsel may have.

1 THE COURT: All right. Cross-examination.

2 **CROSS-EXAMINATION**

3 BY MR. WILLIAMS:

4 Q. Good afternoon, Agent Long.

5 A. Good afternoon, sir.

6 Q. Start with some of the text messages there. Clear to see
7 that there's this relationship between Mr. Williams and
8 Dr. Smithers; correct?

9 A. There appeared to be, yes, sir.

10 Q. And on many of those things that are providing dates of
11 birth; is that correct?

12 A. Yes, sir.

13 Q. Now a date of birth would be required to run any kind of
14 PMP type check, whatever, to check for pharmaceuticals if any
15 other doctor has written; is that correct?

16 A. I don't -- I can't answer that for sure for his account
17 for the PMP. Law enforcement accounts and practitioner
18 accounts differ, is my understanding.

19 Q. Right.

20 A. I don't know what's required, but that would be
21 consistent if it was a law enforcement query.

22 Q. Okay. Let's go back up here to the start just a little
23 bit.

24 THE COURT: I'm not sure I understand your answer,
25 okay.

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1 THE WITNESS: Yes, sir.

2 THE COURT: So the PMP is a way to check and see if
3 a patient has been seeing multiple pharmacies and/or doctors;
4 is that right?

5 THE WITNESS: It's a data base that's -- well, in
6 Virginia, it's the Department of Health Professions.

7 THE COURT: Right.

8 THE WITNESS: And it logs prescriptions that are
9 filled. So pharmacies have to report prescriptions filled to
10 that data base.

11 THE COURT: Right. And so -- and interested
12 governmental parties can access that data base. And the idea
13 is to see if people are abusing drugs; right?

14 THE WITNESS: Yes, sir.

15 THE COURT: So the question was do you have the date
16 of birth -- do you need the date of birth to access the data
17 base for a particular patient?

18 And what was your answer? I didn't understand your
19 answer.

20 THE WITNESS: It's my understanding that when
21 accounts are set up for the Prescription Monitoring Program,
22 that they're set up differently between registrants for
23 practitioners and pharmacies versus what law enforcement
24 access is. And for law enforcement queries, we can use name
25 and date of birth. I can only assume that that would be the

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1 same for practitioners. I don't know if they need any more or
2 any less information for practitioners or pharmacists.

3 THE COURT: All right. So -- so you think that they
4 do need -- practitioners would need the date of birth.

5 THE WITNESS: I would think so, yes, sir.

6 THE COURT: Okay.

7 BY MR. WILLIAMS:

8 Q. Now, Dr. Smithers, for a doctor, he's fairly young, is he
9 not?

10 A. He is, yes, sir.

11 Q. Okay. And he hadn't practiced very long; correct?

12 At the time he started in Virginia, he hadn't
13 practiced very long.

14 A. I don't believe so. He hadn't been in practice very
15 long, no.

16 Q. So he came to Virginia in, I think, 2015; is that
17 correct?

18 A. That's correct. We believe in August.

19 Q. Okay. And so it's pretty obvious through text messages
20 and everything else he let patients owe him money, didn't he?

21 A. He did, yes, sir.

22 Q. So he didn't deny them any type of care or anything
23 during that time that they would owe him money; correct?

24 A. I don't know that I can answer that other than to say
25 that it appeared that he would provide services if money was

1 owed.

2 Q. Okay. I understand.

3 A. I don't know what services.

4 Q. Right.

5 And as far as --

6 THE COURT: Wait a minute. Wait a minute. Wait a
7 minute.

8 MR. WILLIAMS: I'm sorry.

9 THE COURT: You don't know what services?

10 THE WITNESS: I don't know the extent of services
11 that he would provide to people owing him money.

12 THE COURT: Well, don't -- hadn't we just seen that
13 people who were visiting to get -- see him in order to get
14 renewal of prescriptions had to pay money and they were
15 sometimes behind?

16 THE WITNESS: Yes, sir, that's correct.

17 THE COURT: So you do know that.

18 THE WITNESS: I know that. I don't know if there
19 were any other services provided other than the issuing of
20 prescriptions.

21 THE COURT: All right.

22 BY MR. WILLIAMS:

23 Q. Now, from the time Dr. Smithers's practice began in
24 Virginia, and he continued to implement procedures to try to
25 catch those that were abusing drugs, did he not? Let me put

1 it to the you this way --

2 A. I'm not sure how to answer that really.

3 Q. In other words, what I would say is he began eventually
4 to start doing drug testing, did he not?

5 A. He did drug testing. I don't know if that began from the
6 beginning or if he added that, implemented it later.

7 Q. When he first started he did not have Wendell Wilson with
8 him; is that correct?

9 A. That's our understanding. That's correct.

10 Q. So Wendell would have come on and Wendell was in charge
11 of drug testing, was he not?

12 A. That was our understanding. That was one of his
13 functions, yes, sir.

14 Q. Okay. And when he began, was there any staff that you
15 heard of when he started in 2015, other than himself?

16 A. It's our understanding that Mrs. Smithers would often
17 assist there when he first began prior to him hiring
18 Mr. Wilson. We have seen records, collection logs with the
19 name of Don Kencel at the top. But I'm not sure what his role
20 was or much about him.

21 Q. Right. So Mr. Wilson came on; correct?

22 A. Yes, sir.

23 Q. So they began to do the drug testing there at the
24 facility?

25 A. Presumably, yes.

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1 Q. Presumably, yeah, okay.

2 And they would do the pill counts.

3 A. Again, presumably, yes.

4 Q. And so with respect to, with respect to some of the texts
5 and stuff, the texts only show a brief synopsis of what a
6 conversation would be; correct?

7 A. Yes.

8 Q. Okay. In other words, you can't get emotions or anything
9 else out of a text.

10 A. Not -- not in written typed words, no, not usually.

11 Q. In other words, if you're a male, you can get in a lot of
12 trouble by sending a text that gets misinterpreted by your
13 wife; correct?

14 A. I assume that that could be possible.

15 Q. Okay. So within this, we miss a lot of things when we
16 don't see what exactly the parties are talking about in a
17 text; correct? Do you agree with that?

18 A. Well, you certainly don't have tone and, I guess,
19 inflection like you would with a spoken word.

20 Q. Right. It would be hard to tell if someone is joking or
21 serious on something; correct?

22 A. It can be, yes.

23 Q. Okay. Now with respect to the date, we can go back to
24 the date that Dr. Smithers's practice was searched, okay?

25 A. Yes, sir.

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1 Q. Now, at that point in time, what did you search? What
2 was your -- did you have any kind of a search area, or were
3 you --

4 A. A lot of the day that I had was spent with discussions
5 with Dr. Smithers. I was floating through the practice, sort
6 of monitoring other agents and what they were searching. I
7 did spend some time in the reception -- not the waiting area,
8 but the reception office, sort of visualizing where files were
9 kept and monitoring files being boxed up. And then there was
10 some time that I spent interviewing Mr. Angel.

11 Q. Okay. And with respect to the search, going to the
12 backpack that was found in the vehicle.

13 A. Yes, sir.

14 Q. You had the picture there earlier that showed all of the
15 different things laid out.

16 A. Yes, sir.

17 Q. I know you talked about there was some oxymorphone and
18 OxyContin pills and stuff. I think you've listed what the
19 Schedule II drugs were.

20 A. That's correct.

21 Q. Okay.

22 A. If I can clarify, though. I think there were oxycodone
23 pills. And whether they were brand OxyContin, I'd have to
24 look at a report to see. But, yes, oxymorphone and oxycodone
25 pills, yes, sir.

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1 Q. You listed the Schedule II narcotics.

2 A. That's correct, yes, sir.

3 Q. What other types of pills were in that?

4 A. There were various other pharmaceutical pills.

5 Ranitidine. I believe there was --

6 Q. What would ranitidine be?

7 A. I don't know exactly. I believe it's for maybe acid

8 reflux. I'm not sure. I'm not sure. I think it's either an

9 allergy or maybe an acid reflux of some sort.

10 Q. Okay.

11 A. There was a pill, and I don't know how to say it, starts

12 with a "T". There were some Aleve tablets. There were

13 Tylenol tablets. There was the one gelatin with the green

14 powder material that we presumed was some sort of supplement

15 that wasn't marked, and various other tablets.

16 Q. Okay. So it's fair to say there was a mixture of type

17 substances; correct?

18 A. There was a large mixture of different things, yes, sir.

19 Q. So all of these pills together, you've got everything

20 from possibly vitamins all the way up to Schedule II drugs

21 mixed together; correct?

22 A. There was, yes, sir.

23 Q. And going back to the situation there, one of the

24 things you mentioned was that several of the pills were put

25 into individual little packets; is that correct?

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1 A. There were some that were found. And there were some
2 oxymorphone tablets that were found that had been separated
3 into individual packages, yes, sir.

4 Q. Okay. And with respect to those packets, did you have
5 occasion to talk with Dr. Smithers that day?

6 MR. LEE: Objection, Your Honor. Hearsay.
7 Inadmissible.

8 THE COURT: Well, I'm going to sustain any statement
9 made to him by Dr. Smithers as hearsay.

10 MR. WILLIAMS: All right.

11 BY MR. WILLIAMS:

12 Q. Based upon the -- based upon any conversations you may
13 have had, did you follow up regarding where some of those
14 pills may have come from?

15 MR. LEE: Objection, Your Honor. Anything that
16 Mr. Long would have done is based on hearsay. Conversations
17 as a result of that would have been hearsay also.

18 THE COURT: Well, you can ask him whether he
19 investigated where some of the pills came from.

20 MR. WILLIAMS: Okay.

21 BY MR. WILLIAMS:

22 Q. Mr. Long, where did -- did you investigate where some of
23 the pills came from?

24 A. There were agents from my group that followed up on
25 information provided, yes, sir.

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1 Q. Okay. And what was the information that was gathered?

2 MR. LEE: Objection, Your Honor. Again, this would
3 be hearsay statements and inadmissible.

4 THE COURT: Yes. I'll sustain the objection.

5 MR. WILLIAMS: Okay.

6 BY MR. WILLIAMS:

7 Q. Agent Long, the DEA -- drug control -- or the Controlled
8 Substances Act, are you familiar with the Controlled Substance
9 Act?

10 A. Yes, sir.

11 Q. Okay. And does the Controlled Substance Act, what does
12 it say as far as how long the time of pharm -- or a doctor can
13 go from seeing patients, are you familiar with that?

14 MR. LEE: Objection, Your Honor. Agent Long is not
15 an expert on the law, the legal requirements of the Controlled
16 Substances Act. It would be inappropriate for him to testify
17 about those matters.

18 THE COURT: Well, he's a DEA agent. He said he's
19 familiar with the Controlled Substance Act. I'll overrule the
20 objection.

21 MR. LEE: If I may. If there's a regulation that
22 Mr. Williams wants to refer to, he can introduce that into
23 evidence. That would probably be acceptable. But to have
24 Agent Long opine as to what the rules and regulations are --

25 THE COURT: I don't want him to opine. I mean, I

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1 don't want him to interpret or guess, or -- but I'm going to
2 overrule the objection.

3 MR. WILLIAMS: Okay. You're going to overrule the
4 objection, allow him to answer?

5 THE COURT: Yes, sir.

6 MR. WILLIAMS: Okay.

7 THE COURT: I mean, why don't you repeat your
8 question.

9 MR. WILLIAMS: Okay.

10 BY MR. WILLIAMS:

11 Q. Agent Long, was there -- are you familiar in the
12 Controlled Substance Act about doctors and how long they can
13 write a prescription -- how long the prescription can be
14 between visits? How many days they can write prescriptions
15 for?

16 A. There would need to be some specificity to that question
17 because the regulations are different between schedules.

18 Q. Okay. With respect to a Schedule II controlled
19 substance.

20 A. Yes, sir.

21 Q. Would that be 90 days?

22 A. There is a regulation that will allow a practitioner to
23 issue a 90-day supply of medications, but then the Schedule II
24 cannot be refilled, which would be the difference between the
25 Schedule II and the III through Vs where a practitioner is

1 allowed to, on the Schedule III through Vs are allowed to put
2 refills on those. Schedule IIs you cannot refill.

3 Q. Okay.

4 A. But there's more details to that regulation that really
5 come into play.

6 Q. Okay.

7 THE COURT: You mean there are, like, exceptions and
8 so forth?

9 THE WITNESS: Well, the -- the prescriptions,
10 essentially, are -- the 90-day supply is actually provided in
11 30-day segments. So there would essentially be three
12 prescriptions written on the same day, provided to the
13 patient, with a notation on the prescriptions that they could
14 not be filled until that next incremental 30-day period. So,
15 as an example, a person who is in a position with their
16 physician to get a 90-day supply of a Schedule II, let's say
17 they go on January 15th, they would get three prescriptions
18 all dated January 15th. And then one would have -- cannot be
19 filled until February, the 30 days out. And then the third
20 one cannot be filled until March, the 30 days out from there.

21 THE COURT: All right.

22 BY MR. WILLIAMS:

23 Q. Now, with respect to --

24 May I have a second, Your Honor?

25 One of the individuals that you mentioned earlier

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1 was a gentlemen named Robert Battaglia.

2 A. Yes, sir.

3 Q. Okay.

4 MR. WILLIAMS: Can I get this put up on the screen,
5 please.

6 Oh, HDMI, I'm sorry.

7 THE CLERK: Okay. Is this to be displayed to the
8 jury?

9 MR. WILLIAMS: Yes, it's already admitted.

10 THE CLERK: Okay.

11 BY MR. WILLIAMS:

12 Q. I'll be referring to what is Exhibit RB-2. I think you
13 had talked a little bit about the letter that Dr. Smithers had
14 sent to Mr. Battaglia.

15 A. Yes, I was asked about it.

16 Q. And would you care to read the first paragraph under
17 where it says, "Dear Mr. Robert Battaglia."

18 A. "Based on inconsistencies in the information you gave
19 surrounding your inability to come to --

20 THE COURT: Don't read too fast.

21 THE WITNESS: I'm sorry, Judge.

22 "Based on inconsistencies in the information you
23 gave surrounding your inability to come to your most recent
24 appointment with our office, we did further research into your
25 medical record and found inconsistencies and outright

1 inaccuracies in information you provided at your initial
2 intake. Based on this misinformation you became a patient of
3 our practice when otherwise you would not. Due to now
4 repeated distortions and the providing of false information to
5 our practice, you are as of the date of this letter no longer
6 a patient of Smithers Community Healthcare Clinic, PC."

7 MR. WILLIAMS: Thank you.

8 Take that off.

9 BY MR. WILLIAMS:

10 Q. Now, with respect to that, the indications are that
11 Mr. Battaglia had not provided the correct information to
12 Smithers Community Healthcare Clinic; correct? Based upon
13 that letter?

14 A. On that letter, yes, sir.

15 Q. Now, one of the things I know you said about
16 Mr. Battaglia was that whenever you supposedly did this
17 operation, when he got the prescriptions, you indicated that
18 you went with him to the -- to pick up the medication; is that
19 correct?

20 A. That's correct, sir. We accompanied him.

21 Q. So you didn't trust Mr. Battaglia, did you?

22 A. It wasn't a matter of trust, sir. It was a matter of
23 maintaining custody for the DEA operation.

24 Q. Okay. Now, with respect to Dr. Smithers and his
25 treatment of these -- the majority of the patients that

1 Dr. Smithers saw he saw pretty much on a monthly basis, didn't
2 he?

3 A. I can't say that's true.

4 Q. It indicates -- I mean, there's a lot of records
5 indicating that he would see these patients monthly; correct?

6 A. I'm not sure that the records indicate that, no, sir.

7 Q. Now, with respect to this, according to that code
8 section, he could have written prescriptions for 90-day
9 increments; correct?

10 In other words, he could have written -- say he
11 wrote a prescription -- say they saw him on May the first of
12 2019. He could have written a prescription to be filled May
13 the first of '19. Then he could have written a prescription
14 that said not to be filled until June 1st of '19. And then
15 one to be filled July 1st of '19; correct?

16 A. Yes. It's more complex than that. But he could have
17 done that and provided all three of those to the patient on
18 the first visit to comply with the, quote, 90-day rule.

19 Q. Okay. With respect to the text messages, text messages
20 don't indicate, and there's no evidence here showing either
21 way, whether or not Dr. Smithers can call these patients and
22 conduct interviews with them over the phone or anything?

23 A. The text messages don't indicate that, no.

24 Q. Okay. But is it possible that Dr. Smithers called and
25 had visits with these people over the phone?

1 A. I'd say it's possible he's had conversations with people
2 over the phone, yes.

3 MR. WILLIAMS: Your Honor, may have just a moment
4 with my client?

5 THE COURT: Yes, sir.

6 BY MR. WILLIAMS:

7 Q. Agent Long --

8 A. Yes.

9 Q. -- did Dr. Smithers advise you --

10 MR. LEE: Objection, Your Honor. Again, this is a
11 hearsay statement.

12 THE COURT: Yes, sir.

13 MR. LEE: It's inadmissible.

14 THE COURT: I'll sustain the objection.

15 MR. WILLIAMS: No further questions.

16 THE COURT: All right. Anything further?

17 MR. LEE: Briefly, Judge.

18 **REDIRECT EXAMINATION**

19 BY MR. LEE:

20 Q. Agent Long, you've been asked some questions about when
21 prescriptions can be written, over what periods of time.
22 Regardless of those regulations, is it fair to say that any
23 prescription has to be written for a legitimate medical
24 purpose and within the scope of professional practice?

25 A. Yes, sir, that's very explicit in the regulations.

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1 MR. LEE: Okay. No further questions.

2 THE COURT: All right. If there's nothing further,
3 you may step down, sir.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: We're going to take a break at this
6 time.

7 Ladies and gentlemen, if you'll follow the bailiff
8 out.

9 (Proceedings held in the absence of the jury.)

10 THE COURT: All right. If there's nothing from
11 counsel, we'll be in short recess.

12 (Proceedings suspended at 2:44 p.m. and resumed at 2:50
13 p.m.)

14 THE COURT: Mr. Ramseyer, the clerk advises me that
15 the Government doesn't have any further witnesses today.

16 MR. RAMSEYER: That's correct, Your Honor.

17 And I would alert the Court tomorrow the only
18 witness is an expert witness that's coming from out of town
19 that probably won't take, probably at the outside, two hours
20 total.

21 THE COURT: But that witness will be ready at 9:00?

22 MR. RAMSEYER: We -- she's on her way to Atlanta.
23 So assuming that the connection goes -- her flight was delayed
24 significantly. But we think Atlanta is fine. We think she'll
25 be here. We can let the clerk's office know as soon as

1 possible if for some reason she doesn't make it. We certainly
2 hope so. We want to let the Court know we have a witness a
3 week from Thursday that cannot be here tomorrow on this short
4 notice.

5 THE COURT: Yeah, a week from today.

6 MR. RAMSEYER: A week from today. Yes, sir.

7 THE COURT: That's when the jury is going to return.

8 All right. We'll have the jury in.

9 I see you're already packed up there, Mr. Williams.

10 MR. WILLIAMS: We are.

11 (Proceedings held in the presence of the jury.)

12 THE COURT: All right. Ladies and gentlemen, let me
13 go over a few things with you.

14 We don't have any further witnesses today, so I'm
15 going to let you go home, or wherever you want to go.

16 Tomorrow you'll need to come back at 9:00. But it
17 looks like we have a witness that will only take about a
18 couple of hours, so that you should be free hopefully by lunch
19 time, if not earlier.

20 And then I have another trial that I have to preside
21 at. So it's not the fault of anybody else. But we don't need
22 you back here until next Thursday, a week from today. That's
23 May the 9th. So you'll be free, of us anyway, until next
24 Thursday at 9:00.

25 Of course, you have to come tomorrow morning. And

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1 then come back next Thursday, May the 9th, so we can begin at
2 9:00.

3 So we're moving along, I want to tell you, pretty
4 quickly here, a lot quicker than we thought. So that's good
5 news.

6 Next, I want to remind you about your obligations
7 not to discuss this case, nor permit it to be discussed with
8 you, and don't do any research on this case at all.

9 I know that you've heard things about drugs and so
10 on, but you just can't go on the internet or do any research
11 on any of the terms or people or anything about that case. It
12 just wouldn't be fair. It's against the law for you to do
13 that. And we don't want anybody, you know, to do that. It's
14 not fair to the parties. Because you have to decide this
15 case, again, based on the evidence that you hear in the
16 courtroom. And I know you understand that. And if you were
17 in the same position, you certainly wouldn't want jurors doing
18 investigations on their own and so on. So I know you're going
19 to comply with that, but I just wanted to remind you of it.

20 And I appreciate your attention. You-all have done
21 a great job of listening to the evidence. You know, I see a
22 lot of juries and you-all are just doing great. So I
23 appreciate that.

24 We'll see you tomorrow morning and then a week from
25 today. So see you tomorrow morning at 9:00.

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1 Follow the bailiff out.

2 (Proceedings held in the absence of the jury.)

3 THE COURT: All right. Then, Mr. Williams, you're
4 going to let us know tomorrow if you plan to have an expert;
5 is that correct?

6 MR. WILLIAMS: That's correct, Your Honor.

7 THE COURT: All right.

8 If there's nothing further, then we'll be in short
9 recess.

10 (Proceedings concluded at 2:57 p.m.)

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1 **REPORTER'S CERTIFICATE**
2

3 I, DONNA J. PRATHER, do hereby certify that the
4 above and foregoing, consisting of the preceding 168 pages,
5 constitutes a true and accurate transcript of my stenographic
6 notes and is a full, true and complete transcript of the
7 proceedings to the best of my ability.

8 Dated this 8th day of June, 2019.
9

10 S/Donna Prather

11 DONNA J. PRATHER, RPR, CRR, CBC, CCP
12 Federal Official Court Reporter
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